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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Cases filed by Pacific Gas and Electric Company Pursuant to Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Corporation and Pacific Gas and Electric Company, Case No. 19-30088.	INVESTIGATION 19-09-016

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) POST-HEARING BRIEF AND COMMENTS ON ASSIGNED COMMISSIONER'S PROPOSALS

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I. INTRODUCTION AND EXECUTIVE SUMMARY

With implementation of its ongoing and planned reforms, PG&E[1] will emerge from Chapter 11 as a transformed company, with an enhanced focus on safety and customer welfare. PG&E's Plan of Reorganization ("Plan" or "PG&E's Plan")[2] is an important element of that transformation. PG&E's Plan puts the company back on solid financial footing, with sufficient resources to invest in wildfire mitigation and capital improvements, and to provide safe, reliable, clean and affordable energy to its customers. The Plan also pays Fire Victim Claims, Public Entities Wildfire Claims, and Subrogation Wildfire Claims,[3] providing for $25.5 billion to satisfy those claims in the amounts agreed upon in settlements, including a restructuring support agreement ("RSA") with the Tort Claimants Committee and professionals representing over 70% of the holders of Fire Victim Claims.

As shown by the record, PG&E's Plan satisfies the tests of Assembly Bill ("AB") 1054, and it merits Commission approval. The Plan is supported by all the major creditor constituencies, and it is feasible and on track for confirmation prior to the June 30, 2020 deadline

[1] As used herein, "PG&E" refers to both Pacific Gas and Electric Company (the "Utility"), and PG&E Corporation.

[2] References to "Plan" or "PG&E's Plan" are to PG&E's current March 9, 2020 Chapter 11 Plan of Reorganization, but for consistency with testimony, pin citations are to PG&E's previously-filed January 31, 2020 Chapter 11 Plan of Reorganization except where otherwise noted.

At the time of the evidentiary hearing, PG&E's Plan was the Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization dated January 31, 2020, U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF 5280 (the "1/31 Plan"). That Plan was filed and served in this OII on February 3, 2020, attached to PG&E's Notice of Amended Proposed Plan of Reorganization. Subsequently, PG&E filed the Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization dated March 9, 2020 (the "3/9 Plan"). A copy of the 3/9 Plan was filed and served in this OII on March 11, 2020, along with a Notice of Amended Plan clarifying that the March 9, 2020 Plan revisions are not substantial and do not have a material impact on the testimony that has been presented herein. Paragraph numbering in the March 9, 2020 Plan remained largely consistent with the prior PG&E Plan except for part of the Definitions section (where the numbering of certain paragraphs in Article I, Part 1 ("Definitions") increased).

[3] Unless otherwise specified, capitalized terms herein have the meanings given to them in PG&E's Plan.

of AB 1054. PG&E will emerge from Chapter 11 under the Plan with a governance structure that, as required by AB 1054, is "acceptable in light of the electrical corporation's[4] safety history, criminal probation, recent financial condition, and other factors" that the Commission may deem relevant.[5] As demonstrated in PG&E's testimony, PG&E has undertaken and is vigorously pursuing significant initiatives to enhance its safety systems and culture. Those initiatives include:

- Enhanced roles of the Chief Risk Officer ("CRO") and Chief Safety Officer ("CSO");
- Additional safety oversight by an Independent Safety Oversight Committee ("ISOC"), led by an Independent Safety Advisor ("ISA");
- Enhanced Enterprise and Operational Risk Management Program;
- Improved asset management, data collection, and record keeping;
- Improved system reliability, including lessening the impacts of Public Safety Power Shutoff ("PSPS") events on the customers and communities PG&E serves;
- Developing clearly defined safety and operational metrics and a corrective action process; and
- Enhanced vegetation management, safety inspections, and system hardening.

PG&E's safety efforts are reinforced by its new executive compensation system, which is structured to further prioritize safety. A majority of executive compensation will be at risk, requiring achievement of objective performance metrics. Those metrics are heavily weighted toward customer and workforce welfare, and within that category, primarily wildfire safety and other public and employee safety metrics.

[4] "Electrical corporation" as defined in AB 1054 and the Public Utilities Code means the Utility. *See* Pub. Util. Code §§ 218, 3280(e). Unless otherwise noted, all statutory references are to the Public Utilities Code.

[5] *Id.* § 3292(b)(1)(C).

PG&E's safety-oriented governance initiatives also include enhancements at the Board level, including:

- Refined skills matrix for qualifications of Board members, including extensive safety qualifications;
- Substantially new Board members upon emergence, including substantial presence of California residents;
- Expanded responsibility of the Safety and Nuclear Oversight ("SNO") Committees regarding wildfire mitigation and PSPS events; and
- Increased Board oversight of risk management and PSPS events.

PG&E's testimony also established that its governance includes robust efforts and appropriate structures in support of its probation compliance.

While PG&E's efforts in the foregoing areas are sufficient to demonstrate that its Plan meets AB 1054's requirements, PG&E's governance can be further improved. As discussed in more detail below, PG&E supports, with some modifications, each of the ten proposals set forth in the Assigned Commissioner's Ruling[6] to enhance PG&E's governance and operations.

The Plan positions PG&E as financially healthy upon emergence with the ability to make necessary wildfire mitigation and capital investments. As the record shows, PG&E will be able to access the capital markets post-emergence, and will be able to achieve an investment grade credit rating on its secured borrowings, as contemplated under the Plan.

At the same time, PG&E's Plan satisfies the AB 1054 requirements that it be "neutral, on average, to the ratepayers" and that it "recognize the contributions of ratepayers, if any, and compensate them accordingly."[7] There are no net increases in rates attributable to PG&E's Plan (or the associated bankruptcy process). To the contrary, the Plan includes $1.4 billion in interest

[6] Assigned Commissioner's Ruling and Proposals (Feb. 18, 2020) ("ACR").

[7] Pub. Util. Code § 3292(b)(1)(D)(ii) & (E).

cost savings (at least approximately $700 million in present value terms), by refinancing higher cost prepetition bonds at lower rates. These savings will be passed on to customers through a reduction in PG&E's authorized cost of debt, to be implemented as of the Effective Date of the Plan.

The Utility also has pledged to develop in the coming months a regional restructuring plan, with the goal of enhancing customer welfare by bringing various utility functions closer to its customers.

Finally, the testimony establishes that PG&E has been a major contributor to California's clean energy and climate efforts. The Plan is designed to allow PG&E to continue to provide leadership in those areas, and further provides for assumption of all renewable energy power purchase agreements. Accordingly, the Plan is consistent with the state's climate goals, as mandated by AB 1054.[8]

For all of these reasons, and based on the substantial evidentiary record set forth in this proceeding and described below, PG&E respectfully requests that the Commission approve PG&E's Plan.

A. Requested Relief

PG&E submits that, as part of the Commission's decision approving PG&E's Plan, the Commission should make the following determinations, which are prerequisites to PG&E's participation in the statewide fund established by AB 1054 to support payment of wildfire liabilities (the "Wildfire Fund"[9]):

- PG&E's Plan and other documents resolving the insolvency proceeding "including the electrical corporation's resulting governance structure," are approved as "acceptable in light of the electrical corporation's safety history,

[8] Pub. Util. Code § 3292(b)(1)(D)(i).

[9] The "Wildfire Fund" is identified as the "Go-Forward Wildfire Fund" in PG&E's Plan of Reorganization.

criminal probation, recent financial condition, and other factors deemed relevant by the [Commission]."[10]

- PG&E's Plan and other documents resolving the insolvency proceeding are "consistent with the state's climate goals as required pursuant to the California Renewables Portfolio Standard Program and related procurement requirements of the state."[11]

- PG&E's Plan and other documents resolving the insolvency proceeding are "neutral, on average to the ratepayers of the electrical corporation."[12]

- PG&E's Plan and other documents resolving the insolvency proceeding "recognize the contributions of ratepayers, if any, and compensate them accordingly through mechanisms approved by the [Commission]."[13]

In addition, consistent with the Legislature's intent, and in support of PG&E's ability to obtain a safety certification, the Commission's decision should find that:

- PG&E "has established an executive incentive compensation structure [approved by the division and] structured to promote safety as a priority and to ensure public safety and utility financial stability with performance metrics, including incentive compensation based on meeting performance metrics that are measurable and enforceable, for all executive officers."[14]

- PG&E "has established a compensation structure for any new or amended contracts for executive officers, as defined in Section 451.1, that is based on the [principles enumerated in Section 8389(e)(6)]."[15]

The Commission should also reaffirm that PG&E's Plan is exempted from review under Section 854.[16]

PG&E further requests that the Commission decision include approvals for the financings contemplated under the Plan, including in particular:

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[10] *Id.* § 3292(b)(1)(C).

[11] *Id.* § 3292(b)(1)(D).

[12] *Id.*

[13] *Id.* § 3292(b)(1)(E).

[14] *Id.* § 8389(e)(4).

[15] *Id.* § 8389(e)(6).

[16] Administrative Law Judge's Ruling on Section 854 at 1, 5-6 (Nov. 17, 2019).

- Authorizations pursuant to Sections 818 and 823 to issue the Utility long-term and short-term debt instruments and enhancements contemplated for PG&E's Plan funding and to meet the Utility's working capital and short-term debt needs for and after exit from Chapter 11;

- Authorization pursuant to Section 851 to encumber utility property in connection with the same; and

- Confirmation that no advance approval from the Commission is required for PG&E Corporation debt that is secured by a pledge of Utility stock (or, in the alternative, any authorizations the Commission deems necessary in connection with such a transaction).

- Confirmation of adjustments to the calculation of PG&E's capital structure (so that the calculations correspond to the mix of debt and equity capital used to fund rate base) and finding that subject to those adjustments, PG&E's capital structure complies with the authorized capital structure.

B. Assigned Commissioner Ruling and Proposals

The February 18, 2020 ACR includes various proposals on which the parties are asked to comment. PG&E discusses those proposals in the parts of this brief that address the corresponding subject matters. The following is an overview of PG&E's positions on those proposals and a citation to the location where each proposal is discussed in more detail.

ACR § 1 – Executive Level Risk and Safety Officers. (See Part IV.B.2.a.) PG&E supports the enhanced reporting and appointment provisions of the ACR, subject to a few qualifications. PG&E proposes modifying the provision regarding direct dual reporting of regional personnel to both the CRO and CSO, and opposes having their appointments be a public process or subject to government approvals, as that is likely to deter qualified candidates.

ACR § 2 – Independent Safety Advisor. (See Part IV.B.2.c.ii.) PG&E supports the appointment of an ISA upon conclusion of the Federal Monitor. PG&E suggests that the definition of the role be preliminarily identified now, but that the Commission consider PG&E's experience between now and that appointment to evaluate whether that role should be modified based on the circumstances at the time.

ACR § 3 – Expanded SNO Committee Authority. (See Part IV.A.2.a.) PG&E supports the expanded oversight roles and reporting for the SNO Committees. PG&E agrees to consult with the Governor's Office on the initial members of the reformed SNO Committees.

ACR § 4 – Board of Directors. (See Part IV.A.2.b.) PG&E is generally supportive of the various Board-related Proposals, subject to a few qualifications. While PG&E supports a goal of 50% California residents, PG&E believes that a mandatory quota would be unwise. PG&E agrees that a substantial number of Board members will be new at emergence. PG&E does not believe that a presumption of complete turnover is appropriate and does not believe that a prohibition on directors with relationships to investment funds is appropriate. In light of the expanded role of the SNO Committees, PG&E believes that addition of a safety sub-committee of the Boards' Executive Committees is not warranted.

ACR § 5 – Approval of Senior Management. (See Part IV.A.2.c.) PG&E does not object to having the SNO Committees (or, if the Commission chooses, a safety subcommittee of the Executive Committees) approve its executive officers before the Boards also approve them (but, as noted above, does not favor an additional safety sub-committee and thus does not favor such an approval requirement).

ACR § 6 – Regional Restructuring. (See Part IV.B.2.b.) PG&E supports a restructuring to create local operating regions. PG&E supports targeting June 30, 2020 for the filing of an application for approval of such a restructuring and plans to take interim steps toward regional restructuring while the application is pending. While PG&E agrees that employees in the region with safety responsibility should report to the CSO, PG&E does not favor having a risk officer in each region as that function is better performed along lines of business.

ACR § 7 – Safety and Operational Metrics. (See Part IV.B.2.c.ii.) PG&E supports the general concept that it should propose metrics of the types outlined (subject to a few

modifications), to be adopted by the Commission. Development and selection of such metrics is likely to be difficult and time consuming and accordingly PG&E believes that it should take place in proceedings other than this OII, and on a different timetable.

ACR § 8 – Earnings Adjustment Mechanism ("EAM"). (See Part III.D.1.) PG&E recommends against consideration of such a mechanism at this time. PG&E has proposed a substantially revamped executive compensation program, which strongly aligns with positive safety outcomes. The Commission should allow PG&E to implement that executive compensation program and evaluate safety performance before pursuing a new EAM. This is particularly important because an EAM, especially one that relies on metrics not traditionally employed by utilities to measure performance, will involve substantial modelling difficulties, has the potential to negatively affect the balance struck in the executive compensation performance metrics, and even under the best of circumstances would add another layer of uncertainty to PG&E's regulatory outcomes. Now is not the right time to pursue such a mechanism, which would introduce additional uncertainty to the capital markets, and would put downward pressure on PG&E's credit rating, just as PG&E is about to embark on a historically large capital raise. Consideration of any EAM should be deferred to a later time.

ACR § 9 – Executive Compensation. (See Part IV.C.3.) PG&E generally supports the principles articulated in this Proposal, including that executive compensation should include safety incentives, and that substantial portions of executive compensation should be at risk and deferred. PG&E proposes two major modifications to this Proposal. First, in the event of a catastrophic event, it should be up to the Board (and the PG&E Corporation Compensation Committee), not the Commission, to determine whether incentive payments should be withheld based on all of the facts and circumstances. Second, PG&E recommends that the Commission

revise the proposal to restrict or eliminate severance benefits based on circumstances unrelated to an individual's own misconduct.

ACR § 10 – Enhanced Oversight and Enforcement Process (the "Process"). (See Part IV.B.2.d. and Appendix A.) PG&E supports the Commission establishing an enhanced oversight and enforcement process. Specifically, PG&E supports the establishment of a six-step process, wherein PG&E would enter the process upon the occurrence of defined triggering events including the failure to comply with reasonably achievable safety and operational metrics, and would move into higher levels of intervention over time if triggering events were not sufficiently addressed through corrective actions. PG&E proposes two major modifications to the Proposal. First, before PG&E is moved from Step 3 to Step 4 (or higher steps), the Commission should give PG&E at least 12 months to implement the required corrective actions approved by the Commission and evaluate the results.[17] This minimum time period is critical to give PG&E the time needed to address safety and compliance issues. Second, the Commission, and not the Executive Director, should make the momentous decision to move PG&E into steps 3 and above. These changes are in the public interest, consistent with public policy, and critically important to financial markets that otherwise may assume that PG&E, without a vote of the full Commission, will enter a process that may culminate in the loss of its Certificate of Public Convenience and Necessity ("CPCN") in a matter of months after being placed in Step 3 of the Process. In addition to these two significant recommended changes, PG&E also proposes a number of more technical modifications in particular steps.

[17] In other words, the interval between the initiation of Step 3 or above and the initiation of the next highest step would be at least twelve months. This would not preclude the Commission from initiating a proceeding in sooner than 12 months to determine whether to move PG&E to a higher step, provided that the ultimate decision to take such action occurs no sooner than 12 months after the decision to move PG&E into the step below.

Based on the Commission's adoption of those proposals with any appropriate modifications, PG&E will implement these proposals, including, where necessary and appropriate, through its Plan Supplement and other submissions to the Bankruptcy Court. These measures, together with the steps that PG&E has described in its testimony, justify a Commission finding that the Plan complies with AB 1054.

II. PROCEDURAL BACKGROUND AND PG&E'S PLAN OF REORGANIZATION

A. Chapter 11 Proceeding

On January 29, 2019, as a result of a confluence of factors, including the catastrophic Northern California wildfires of 2017 and 2018, PG&E filed for relief under Chapter 11.[18] Since that filing, despite the extraordinary complexity of the bankruptcy and the tight June 30, 2020 deadline imposed by AB 1054, PG&E's Chapter 11 process has progressed towards a successful conclusion. PG&E has actively engaged with all of its constituencies in a drive towards consensus on a plan of reorganization. PG&E entered into a succession of RSAs with certain key constituencies—including (1) public entities, (2) subrogation claimants, (3) the Tort Claimants Committee and professionals representing over 70% of the holders of Wildfire Claims, and (4) the Ad Hoc Noteholders Committee—leading to successive proposed plans of reorganization with increasing levels of support.

On January 31, 2020, PG&E filed with the Bankruptcy Court the Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization ("1/31 Plan") incorporating all of these agreements.[19] That plan was described in the prepared testimony of Jason P. Wells and William D. Johnson submitted at the evidentiary hearing in this matter. PG&E subsequently

[18] *In re PG&E Corporation and Pacific Gas and Electric Company*, U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088 (DM) (Lead Case).

[19] *See Notice of Amended Plan of Reorganization*, filed in this proceeding on February 3, 2020.

filed Debtors' and Shareholder Proponents Joint Chapter 11 Plan of Reorganization dated March 9, 2020 ("Plan" or "PG&E's Plan" or "3/9 Plan"), which makes only a few changes, largely in the nature of clarifications, to the 1/31 Plan.[20] The Bankruptcy Court has scheduled a Confirmation Hearing for May 27, 2020 to determine whether PG&E's Plan should be confirmed.

B. Assembly Bill 1054

On July 12, 2019, Governor Newsom signed into law AB 1054, which among other things establishes the statewide Wildfire Fund that participating utilities may access to pay certain liabilities arising in connection with wildfires occurring after that date. AB 1054 also sets forth conditions to and costs of participating in the Wildfire Fund. Southern California Edison ("SCE") and San Diego Gas & Electric Company ("SDG&E") have elected to participate in the Wildfire Fund.

The Utility has provided notice to the Commission of its intent to participate in the Wildfire Fund, and on August 26, 2019, the Bankruptcy Court authorized the Utility to participate. However, under AB 1054, the Utility must satisfy several additional conditions in order to participate. Of particular pertinence here, the Utility must satisfy the following conditions by June 30, 2020:

> (A) The electrical corporation's insolvency proceeding has been resolved pursuant to a plan or similar document not subject to a stay.
>
> (B) The bankruptcy court or a court of competent jurisdiction, in the insolvency proceeding, has determined that the resolution of the

[20] *See Notice of Amended Plan of Reorganization,* filed in this proceeding on March 11, 2020. As detailed in that Notice, the recent amendment (1) removes references to potential Wildfire Victim Recovery Bonds (as not pertinent under the circumstances), (2) clarifies that post-petition administrative claims, such as from the Kincaid fire, will not be discharged under the plan, (3) clarifies that Environmental Claims will not be discharged under the plan, (4) affirms that the Pacific Gas and Electric Company Retirement Plan will be assumed, and (5) removes PG&E's determination of "satisfactory resolution" of claims for fines and penalties from the CPUC Approval condition precedent to plan confirmation.

> insolvency proceeding provides funding or establishes reserves for, provides for assumption of, or otherwise provides for satisfying any prepetition wildfire claims asserted against the electrical corporation in the insolvency proceeding in the amounts agreed upon in any pre-insolvency proceeding settlement agreements or any post-insolvency settlement agreements, authorized by the court through an estimation process or otherwise allowed by the court.
>
> (C) The commission has approved the reorganization plan and other documents resolving the insolvency proceeding, including the electrical corporation's resulting governance structure as being acceptable in light of the electrical corporation's safety history, criminal probation, recent financial condition, and other factors deemed relevant by the commission.
>
> (D) The commission has determined that the reorganization plan and other documents resolving the insolvency proceeding are (i) consistent with the state's climate goals as required pursuant to the California Renewables Portfolio Standard Program and related procurement requirements of the state and (ii) neutral, on average, to the ratepayers of the electrical corporation.
>
> (E) The commission has determined that the reorganization plan and other documents resolving the insolvency proceeding recognize the contributions of ratepayers, if any, and compensate them accordingly through mechanisms approved by the commission, which may include sharing of value appreciation.[21]

In addition, AB 1054 provides that "any approved bankruptcy reorganization plan of an electrical corporation should, in regards to compensation for executive officers of the electrical corporation, comply with the requirements of [Public Utilities Code Sections 8389(e)(4) and (e)(6)."[22] Those section contemplate a showing that:

> (4) The electrical corporation has established an executive incentive compensation structure approved by the division and structured to promote safety as a priority and to ensure public safety and utility financial stability with performance metrics, including incentive compensation based on meeting performance metrics that are measurable and enforceable, for all executive officers, as defined in Section 451.5. … [and]

[21] Pub. Util. Code § 3292(b)(1)(A)–(E).

[22] *Id.* § 8389(e)(6)(C).

> (6)(A) The electrical corporation has established a compensation structure for any new or amended contracts for executive officers, as defined in Section 451.5, that is based on the following principles:
>
> (i)(I) Strict limits on guaranteed cash compensation, with the primary portion of the executive officers' compensation based on achievement of objective performance metrics.
>
> (II) No guaranteed monetary incentives in the compensation structure.
>
> (ii) It satisfies the compensation principles identified in paragraph (4).
>
> (iii) A long-term structure that provides a significant portion of compensation, which may take the form of grants of the electrical corporation's stock, based on the electrical corporation's long-term performance and value. This compensation shall be held or deferred for a period of at least three years.
>
> (iv) Minimization or elimination of indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest in the electrical corporation.[23]

C. Overview Of This OII

The Commission opened this Order Instituting Investigation ("OII") on October 4, 2019. In addition to PG&E, 38 organizations and individuals appeared as parties in this OII.[24] On November 14, 2019, the Assigned Commissioner's Scoping Memo and Ruling ("Scoping

[23] *Id.* § 8389(e)(4) & (6)(A).

[24] Alliance for Nuclear Responsibility ("A4NR"), American Wind Energy Association of California, CPUC Legal Division, California Biomass Energy, California Large Energy Consumers Association ("CLECA"), Center for Accessible Technology ("CAT"), Center for Energy Efficiency and Renewable Technologies, City and County of San Francisco ("CCSF), City of San Jose, Coalition of California Employers ("CUE"), Consolidated Edison Company of N.Y., East Bay Community Energy, Energy Producers and Users Coalition ("EPUC"), Independent Energy Producers Association ("IEP"), Indicated Shippers ("IS"), Institutional Equity Investors, Marin Clean Energy ("MCE"), Monterey Bay Community Power, Natural Resources Defense Council ("NRDC"), Nextera Energy Resources, LLC, Official Committee of Pacific Gas and Electric Company Tort Claimants ("TCC"), Official Committee of Unsecured Company Creditors, Peninsula Clean Energy Authority, Public Advocates Office, Redwood Coast Energy Authority Alliance, SDG&E, Silicon Valley Clean Energy Authority, Small Business Utility Advocates ("SBUA"), Solar Energy Industries Association, Sonoma Clean Power Authority, South San Joaquin Irrigation District, SCE, The Climate Center, The Utility Reform Network ("TURN"), Valley Clean Energy Alliance, Wild Tree Responsibility Foundation, and William B. Abrams. The Ad Hoc Noteholder Committee ("AHC") also appeared but later withdrew as a party.

Memo") was issued, setting forth the issues to be considered. Those issues included the various issues set forth in Section 3292(b)(1), as well as potential consideration of factors under Section 854. On November 17, 2019, the Administrative Law Judge's Ruling on Section 854 held that plans of reorganization to be considered in this OII "are exempt from review under Public Utilities Code Section 854," and that, instead, "specific criteria contained within Section 854 may be referred to for guidance as we review the proposed plans, as contemplated in Section 853(b)."[25]

Initially, testimony in this OII was bifurcated into non-financial and financial phases, with non-financial testimony submitted by PG&E, AHC, and certain other parties, on December 13, 2019. After AHC reached an agreement with PG&E and withdrew its alternative proposed plan from consideration, testimony and hearings were consolidated into a single phase.[26]

On January 31, 2020, PG&E served opening testimony and accompanying exhibits on all Scoping Memo issues. On February 21, 2020, various intervenors served reply testimony. Evidentiary hearings were held February 25, 2020 through March 4, 2020, at which the prepared testimony as well as other exhibits were admitted into evidence.[27] In addition to the intervenors

[25] *Id.* at 1, 5-6. The Ruling further clarified that "it is not mandatory that a reorganization plan satisfy each of these [Section 854] criteria, but rather the Commission will consider each of these criteria and evaluate, on balance, if the reorganization plan is in the public interest." *Id.* at 11.

[26] Administrative Law Judge's Ruling Modifying Schedule (Dec. 27, 2019).

[27] PG&E presented testimony from William Johnson, Jason Wells, John Plaster, Nora Mead Brownell, Andrew Vesey, Stephen Cairns, Amit Gupta, Megan Hertzler, Deborah Powell, Matthew Pender, Tracy Maratukulam, John Lowe, Julie Kane, Jessica Hogle, Martin Wyspianski, and Robert Kenney. All of these witnesses were made available for cross-examination, and all but Stephen Cairns, Megan Hertzler and Jessica Hogle were cross-examined at the evidentiary hearing.

The following intervenors also submitted testimony, which was admitted at the hearing: EPUC, IS, TURN, SBUA, CLECA, CCSF, CUE, Joint Community Choice Aggregators (East Bay Community Energy, Peninsula Clean Energy Authority, Monterey Bay Community Power, The City of San Jose on behalf of San Jose Clean Energy, and Silicon Valley Clean Energy Authority) (collectively, "Joint CCAs," or "JCCA"), A4NR, Mr. Abrams, and NRDC.

that submitted opening testimony, other intervenors also participated in cross-examination of witnesses.[28]

On February 18, 2020, the ACR was issued, setting forth various proposals to be discussed by the parties in briefing following the above-referenced evidentiary hearing (and potentially to be addressed in a further evidentiary hearing, if necessary). The ACR stated that "[a]fter review of the record to date, including PG&E's opening testimony, and in light of the limited schedule to meet the June 30, 2020 statutory deadline this Assigned Commissioner's Ruling seeks parties' comments on the Proposals to inform the development of the record across the many important issues before us."[29] As described above, PG&E's brief addresses each of these Proposals in conjunction with the subject matters to which they relate.

D. PG&E's Plan of Reorganization

The following discussion summarizes key terms of PG&E's Plan, as filed in the bankruptcy court and in this proceeding.

1. Wildfire Claims

PG&E's Plan provides for the payment of $25.5 billion in settlement of Fire Claims, which are defined as any past, present, or future claims related to specified wildfires that occurred in Northern California in 2015 through 2018.[30] This includes four different classes of Fire Claims:

- Fire Victim Claims;
- Public Entities Wildfire Claims;
- Subrogation Wildfire Claims; and

[28] CAT, IEP, MCE and TCC also participated in the evidentiary hearings.

[29] ACR at 2.

[30] *See* PG&E's Plan §§ 1.75, 1.83 [3/9/20 Plan §§ 1.78, 1.86] & Ex. A.

- Subrogation Butte Fire Claims.

(a) Fire Victim Claims

Fire Victim Claims include those Fire Claims against PG&E that do not fall within the definitions of Public Entities Wildfire Claims, Subrogation Wildfire Claims, or Subrogation Butte Fire Claims, as described further below.[31] This includes claims by individual wildfire victims as well as others, such as claims held by certain other government entities, including fire suppression cost claims asserted by the California Governor's Office of Emergency Services ("Cal OES") and disaster assistance claims asserted by the Federal Emergency Management Agency ("FEMA").[32]

To compensate holders of Fire Victim Claims, PG&E's Plan provides for the establishment of the Fire Victim Trust, funded with a total of $13.5 billion, consisting of (1) $5.4 billion in cash on the Plan's Effective Date; (2) another $1.35 billion in cash in two installments in 2021 and 2022 pursuant to the Tax Benefits Payment Agreement with the Fire Victim Trust; and (3) $6.75 billion in (and not less than 20.9% of) Reorganized PG&E Corporation Common Stock. In addition, the Debtors will assign certain rights and causes of action to the Fire Victim Trust.

The Fire Victim Trust will administer, process, settle, resolve, liquidate, satisfy, and pay, in full and final satisfaction, all Fire Victim Claims and all Fire Victim Claims will be subject to an injunction permanently channeling them to the Fire Victim Trust.[33] Pursuant to the channeling injunction, the Fire Victim Claims will be asserted exclusively against the Fire

[31] *See* PG&E's Plan § 1.76 [3/9 Plan § 1.79].

[32] Under a settlement reached during a March 9, 2020 mediation, the FEMA claims will be reduced to $1 billion and channeled into the Fire Victim Trust and subordinated to other fire victim claims therein. The Cal OES will withdraw its claims for reimbursement under the Plan, pursuant to this mediated settlement.

[33] *See* PG&E's Plan § 6.7.

Victim Trust with no recourse to the Debtors, Reorganized Debtors, or their assets and properties. The Fire Victim Trust will be administered by the Fire Victim Trustee, whose appointment is selected by the Consenting Fire Claimant Professionals and the Tort Claimants Committee, subject to the approval of the bankruptcy court, and overseen by the Fire Victim Trustee Oversight Committee.[34]

(b) Public Entities Wildfire Claims

Public Entities Wildfire Claims are Fire Claims against PG&E held by Public Entities, which include (1) the North Bay Public Entities (comprising 14 cities and counties); (2) the Town of Paradise; (3) the County of Butte; (4) the Paradise Park and Recreation District; (5) the County of Yuba; and (6) the Calaveras County Water District.[35] As already noted, claims by other government entities beyond those specifically defined as Public Entities are compensated through the Fire Victim Trust. PG&E's Plan provides that the Public Entities will receive $1 billion in full and final satisfaction of their wildfire claims against the Debtors, to be distributed in accordance with the Public Entities Plan Support Agreements.[36] The Public Entities also will benefit from a $10 million Public Entities Segregated Defense Fund, established for the benefit of the Public Entities to reimburse legal fees and costs associated with third party claims against the Public Entities related to the specified fires.[37]

(c) Subrogation Wildfire Claims

Subrogation Wildfire Claims include any Fire Claim (other than a Fire Claim arising from the Butte Fire in 2015) that arises from subrogation or assignment (whether contractual,

[34] *See* PG&E's Plan §§ 1.81, 1.82 [3/9 Plan §§ 1.84. 1.85], 6.8.

[35] *See* PG&E's Plan §§ 1.138, 1.160 [3/9 Plan §§ 1.44, 1.166].

[36] *See* PG&E's Plan §§ 1.162, 1.166, 1.168, 4.5, 4.22 [3/9 Plan §§ 1.168, 1.172, 1.174, 4.5, 4.24].

[37] *See* PG&E's Plan §§ 1.164, 1.167 [3/9 Plan §§ 1.170, 1.173], 6.9.

equitable, or statutory) or otherwise in connection with payments by an insurer to insured tort victims.[38] Consistent with the settlement reached between the Debtors and holders of Subrogation Wildfire Claims, PG&E's Plan provides for the establishment of the Subrogation Wildfire Trust, which will be funded with a total of $11 billion in cash.[39]

The Subrogation Wildfire Trust will administer, process, settle, resolve, liquidate, satisfy, and pay, in full and final satisfaction, all Subrogation Wildfire Claims and all Subrogation Wildfire Claims will be subject to an injunction permanently channeling them to the Subrogation Wildfire Trust.[40] Pursuant to the channeling injunction, the Subrogation Wildfire Claims will be asserted exclusively against the Subrogation Wildfire Trust with no recourse to the Debtors, Reorganized Debtors, or their assets and properties. The Subrogation Wildfire Trust will be administered by the Subrogation Wildfire Trustee, who will be selected by holders of Subrogation Wildfire Claims, and overseen by the Subrogation Wildfire Trust Advisory Board.[41]

(d) Subrogation Butte Fire Claims

Subrogation Butte Fire Claims include any Fire Claim arising from the Butte Fire (2015) that arises from subrogation or assignment (whether contractual, equitable, or statutory), or otherwise in connection with payments made by the insurer to insured tort victims.[42] Any claims related to settlements relating to Subrogation Butte Fire Claims are treated as General Unsecured Claims, discussed below.[43]

[38] PG&E's Plan § 1.195 [3/9 Plan § 1.201].

[39] *See* PG&E's Plan §§ 1.193, 1.195, 1.197, 4.23, 6.4 [3/9 Plan §§ 1.199, 1.201, 1.203, 4.25, 6.4].

[40] *See* PG&E's Plan §§ 4.6, 4.23 [3/9 Plan § 4.25], 6.4.

[41] *See* PG&E's Plan §§ 1.200, 1.198 [3/9 Plan §§ 1.206, 1.204, 6.5, 6.6], 6.5, 6.6

[42] *See* PG&E's Plan § 1.192 [3/9 Plan § 1.198].

[43] *See* PG&E's Plan § 1.187 [3/9 Plan § 1.193].

2. Other Claims

PG&E's Plan also resolves other prepetition claims against PG&E in the following manner:

(a) Funded Debt Claims

PG&E's Plan reflects the Noteholder RSA entered into with members of the Ad Hoc Committee of Senior Unsecured Noteholders of the Utility regarding the treatment of claims related to prepetition funded debt. Specifically:

Utility Impaired Senior Note Claims. Utility Impaired Senior Note Claims relate to certain prepetition high-coupon senior notes of the Utility.[44] PG&E's Plan provides that Utility Impaired Senior Note Claims receive cash for prepetition interest calculated at the non-default contract rate and postpetition interest calculated at the Federal Judgment Rate[45] as well as equal amounts of each issue of the New Utility Long-Term Notes[46] in an aggregate amount equal to the principal on such holder's Utility Impaired Senior Note Claim.[47]

Utility Reinstated Senior Note Claims. Utility Reinstated Senior Note Claims relate to certain prepetition low-coupon senior notes of the Utility.[48] PG&E's Plan provides that Utility Reinstated Senior Note Claims will be reinstated.[49]

Utility Short-Term Senior Note Claims. Utility Short-Term Senior Note Claims relate to certain prepetition senior notes of the Utility with near-term maturities.[50] PG&E's Plan provides

[44] *See* PG&E's Plan §§ 1.218, 1.219, 1.220, 1.221 [3/9 Plan §§ 1.225-1.229].

[45] 28 U.S.C. § 1961(a).

[46] *See* PG&E-01 at 2-28 (opening testimony of Mr. Wells). *See also* App'x B.

[47] PG&E's Plan § 4.16 [3/9 Plan § 4.18].

[48] *See* PG&E's Plan §§ 1.229, 1.230 [3/9 Plan §§ 1.238, 1.239].

[49] PG&E's Plan § 4.17 [3/9 Plan § 4.19].

[50] *See* PG&E's Plan §§ 1.240, 1.241, 1.242, 1.243 [3/9 Plan §§ 1.250-1.253].

that Utility Short-Term Senior Note Claims receive cash for prepetition interest calculated at the non-default contract rate and postpetition interest calculated at the Federal Judgment Rate as well as equal amounts of each issue of the New Utility Short-Term Notes[51] in an aggregate amount equal to the principal on such holder's Utility Short-Term Senior Note Claim.[52]

Utility Funded Debt Claims. Utility Funded Debt Claims relate to certain prepetition debt, namely the Utility's prepetition revolver, term loan, and certain pollution control bonds.[53] PG&E's Plan provides that Utility Funded Debt Claims receive cash for prepetition interest at the non-default contract rate, certain other fees and expenses, and postpetition interest calculated at the Federal Judgment Rate as well as equal amounts of each issue of the New Utility Funded Debt Exchange Notes[54] in an aggregate amount equal to the principal on such holder's Utility Funded Debt Claim.[55]

Utility PC Bond (2008 F and 2010 E) Claims and HoldCo Funded Debt Claims. Utility PC Bond (2008 F and 2010 E) Claims relate to certain prepetition pollution control bonds of the Utility, and HoldCo Funded Debt Claims relate to certain prepetition debt of PG&E Corporation.[56] PG&E's Plan provides that Utility PC Bond (2008 F and 2010 E) Claims and HoldCo Funded Debt Claims will receive in cash the principal amount of the claim as of the petition date (January 29, 2019), all accrued and unpaid interest owed as of that date, and interest

[51] *See* PG&E-01 at 2-28 (opening testimony of Mr. Wells). *See also* App'x B.

[52] PG&E's Plan § 4.18.

[53] *See* PG&E's Plan §§ 1.212, 1.213. 1.214, 1.215 [3/9 Plan §§ 1.219-1.222].

[54] *See* PG&E-01 at 2-27 – 2-28 (opening testimony of Mr. Wells). *See also* App'x B.

[55] PG&E's Plan § 4.19 [3/9 Plan § 4.21].

[56] *See* PG&E's Plan §§ 1.95, 1.143, 1.225 [3/9 Plan §§ 1.99, 1.149, 1.234].

accrued from the petition date through the date when PG&E's Plan becomes effective at the Federal Judgment Rate.[57]

(b) Employee-Related Claims

PG&E's Plan provides that workers' compensation claims will ride through. In other words, holders of workers' compensation claims will be entitled to pursue those claims post emergence as if the Chapter 11 cases had not been commenced.[58]

(c) General Unsecured Claims

PG&E's Plan provides that General Unsecured Claims[59] will be paid in full. In other words, each holder of a General Unsecured Claim will receive in cash an amount equal to the holder's claim, including all interest accrued from the Petition Date through the Effective Date at the Federal Judgment Rate.[60]

(d) Ghost Ship Fire Claims

Claims related to the Ghost Ship Fire, which occurred in Oakland, California on December 2, 2016, may be pursued in state court against PG&E but any recovery would be limited solely to the total tower of PG&E's applicable insurance policies, as available, for 2016.[61]

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[57] PG&E's Plan §§ 4.3, 4.20 [3/9 Plan §§ 4.3, 4.22].

[58] *See* PG&E's Plan §§ 4.9, 4.26 [3/9 Plan §§ 4.9, 4.28].

[59] *See* PG&E's Plan § 1.87 (defining General Unsecured Claim as "any Claim, other than a DIP Facility Claim, Administrative Expense Claim, Professional Fee Claim, Priority Tax Claim, Other Secured Claim, Priority Non-Tax Claim, Funded Debt Claim, Workers' Compensation Claim, 2001 Utility Exchange Claim, Fire Claim, Ghost Ship Fire Claim, lntercompany Claim, Utility Senior Note Claim, Utility PC Bond (2008 F and 2010 E) Claim, or Subordinated Debt Claim, that is not entitled to priority under the Bankruptcy Code or any Final Order. General Unsecured Claims shall include any (a) Prepetition Executed Settlement Claim, including but not limited to settlements relating to Subrogation Butte Fire Claims; and (b) Claim for damages resulting from or otherwise based on the Debtors' rejection of an executory contract or unexpired lease"); *see also* PG&E Plan §§ 1.96, 1.216.

[60] *See* PG&E's Plan §§ 4.4, 4.21 [3/9 Plan §§ 4.4, 4.23].

[61] *See* PG&E's Plan §§ 1.88, 1.89, 4.8, 4.25 [3/9 Plan §§ 1.91, 1.92, 4.8, 4.27].

(e) Priority Tax And Priority Non-Tax Claims

PG&E's Plan provides that Priority Tax Claims and other priority claims (i.e., Priority Non-Tax Claims) will be paid in full. That is, each holder of a Priority Tax Claim or Priority Non-Tax Claim will receive cash in an amount equal to the claim, including through the date PG&E's Plan becomes effective at the Federal Judgment Rate.[62] For Priority Tax Claims, PG&E can elect whether to pay (1) in full "on the Effective Date or as soon as reasonably practicable thereafter, or (2) … in equal semi-annual installments and continuing over a period not exceeding five (5) years from and after the Petition Date, together with interest accrued thereon at the applicable nonbankruptcy rate … ."[63] However, any Priority Tax Claim not due and payable on or before the Effective Date will be paid in the ordinary course as such obligations becomes due.[64] Consistent with this provision, all allowed prepetition state tax obligations will be paid in full and PG&E will pay currently due state tax obligations promptly.

(f) Subordinated Debt Claims

PG&E's Plan provides that Subordinated Debt Claims will be paid in full. That is, each holder of a subordinated debt claim will receive cash in the amount of the claim.[65]

(g) Common Interests

PG&E's Plan provides that each holder of PG&E Corporation common stock will retain that interest in Reorganized PG&E Corporation subject to dilution from new equity investments

[62] *See* PG&E's Plan §§ 1.45, 1.46, 2.4, 4.2, 4.15 [3/9 Plan §§ 1.46, 1.47, 2.4, 4.2, 4.17].

[63] PG&E's Plan § 2.4.

[64] *Id.*

[65] *See* PG&E's Plan §§ 1.109, 1.191, 1.244, 4.11, 4.29 [3/9 Plan §§ 1.115, 1.197, 1.255, 4.12, 4.32].

and shares distributed to the Fire Victim Trust, and receive a pro rata right to participate in any rights offering.[66] Utility Common Interests will be reinstated.[67]

(h) Administrative Expense Claims

PG&E's Plan provides that Administrative Expense Claims will be paid in full. That is, each holder of an Administrative Expense Claim will be paid in the ordinary course and receive cash in the allowed amount of the claim.[68]

(i) Environmental Claims

After the Effective Date of the Plan, holders of Environmental Claims may pursue those claims to the same extent as if PG&E's Chapter 11 cases had not been filed.[69]

3. Participation In The Wildfire Fund

PG&E's Plan will enable the Utility to participate in the statewide Wildfire Fund upon emergence. Specifically, and as discussed in more detail below, PG&E's Plan complies with AB 1054's requirements and provides that on the date it becomes effective the Utility will make its initial contribution of approximately $4.8 billion and its first annual contribution of approximately $193 million to the Wildfire Fund established pursuant to AB 1054.[70] A portion of the Utility's contribution will come from long-term debt and, consistent with AB 1054, the Utility's contributions will not be recovered from customers.[71] The Utility's participation in the Wildfire Fund is critical to PG&E's financial health post emergence as well as for the fund itself

[66] *See* PG&E's Plan §§ 1.93, 1.180, 4.12 [3/9 Plan §§ 1.96, 1.186, 4.13].

[67] *See id*.

[68] *See* PG&E's Plan §§ 1.4, 2.1.

[69] 3/9 Plan §§ 4.10, 4.30.

[70] *See* PG&E's Plan § 6.10.

[71] Pub. Util. Code § 3292(b)(3) ("Initial contributions shall not be recovered from the ratepayers of an electrical corporation"); *id.* § 3292(c) ("Annual contributions shall not be recovered from the ratepayers of an electrical corporation.").

and the State. AB 1054 and the Wildfire Fund, together with the Commission's implementation of this new statutory and regulatory regime, are important for potential investors as well as for PG&E's credit ratings and access to debt and equity markets. Equally, given the size of PG&E and its service territory, the Utility's participation also is critical for the Wildfire Fund and the State, as PG&E is set to provide over 60% of the portion of the fund's resources that come from California utility shareholders.[72]

4. Assumption Of Agreements

PG&E's Plan provides for the assumption of various agreements upon emergence, once PG&E's Plan becomes effective. First, all power purchase agreements, renewable energy power purchase agreements, and Community Choice Aggregation servicing agreements will be assumed.[73]

Second, all Employee Benefit Plans and Collective Bargaining Agreements will be assumed.[74] On the latter point, PG&E will assume (1) the two agreements currently in place between the Utility and IBEW Local 1245 (specifically, (i) the IBEW Physical Agreement, and (ii) the IBEW Clerical Agreement, as such agreements will be further amended, supplemented or modified in a manner consistent with the IBEW Agreement, attached to PG&E's Plan); (2) the Collective Bargaining Agreement currently in place between the Utility and the Engineers and Scientists of California Local 20, IFPTE; and (3) the Collective Bargaining Agreement currently in place between the Utility and the Service Employees International Union.[75] In addition, PG&E will assume the Pacific Gas and Electric Company Retirement Plan.[76] PG&E will make

[72] *Id.* § 3280(n).

[73] *See* PG&E's Plan § 8.1.

[74] *See* PG&E's Plan §§ 1.29, 1.60, 8.5, 8.6 [3/9 Plan §§ 1.30, 1.61, 8.5, 8.6].

[75] *See* PG&E's Plan §§ 1.29, 1.117, 1.118 [3/9 Plan §§ 1.30, 1.123, 1.124].

[76] *See* PG&E's 3/9 Plan § 8.5(c).

all outstanding payments which are accrued and unpaid as of the Effective Date pursuant to the Employee Benefit Plans promptly. In addition, the assumption of the Employee Benefit Plans will result in a full release of any claims arising under the Employee Benefit Plans at any time before the Effective Date.

5. Management Incentive Plan

PG&E's Plan also enables PG&E to comply with the requirements of AB 1054 with respect to executive compensation. Specifically, PG&E's Plan provides that the Boards of the reorganized Utility and PG&E Corporation may establish and implement a management incentive plan that complies with the requirements of AB 1054. As discussed in more detail below, PG&E will incorporate into its Plan or related documents any direction the Commission provides in its decision in this proceeding with regard to executive compensation in order to ensure compliance with the relevant provisions of AB 1054.

6. Conditions Precedent To Plan Confirmation And Effectiveness

There are a number of conditions precedent to confirmation of PG&E's Plan and to the occurrence of the Effective Date under PG&E's Plan after confirmation. For instance, both the confirmation and effectiveness of PG&E's Plan are conditioned on, inter alia, certain RSAs and backstop commitments being in full force and effect and PG&E receiving various approvals from the Commission.[77]

CPUC Approval is defined as "all necessary approvals, authorizations and final orders from the Commission to implement the Plan, and to participate in the Go-Forward Wildfire Fund."[78] This includes:

[77] *See* PG&E's Plan §§ 9.1, 9.2.

[78] PG&E's Plan § 1.37 [3/9 Plan § 1.38].

a) "[S]atisfactory provisions pertaining to authorized return on equity and regulated capital structure."[79] While PG&E continues to believe that the rate of return on equity authorized in D.19-12-056 (or the "2020 Cost of Capital Decision") is too low, PG&E is willing to accept it as satisfactory for purposes of the Plan. The Utility's Application for a Waiver of the Capital Structure Condition (A.19-02-016) remains pending. PG&E anticipates that the Utility will emerge from bankruptcy with a balanced capital structure that complies with the regulatory capital structure authorized in D.19-12-056 provided the Commission authorizes certain adjustments described in more detail below.

b) "[A] disposition of proposals for certain potential changes to the Utility's corporate structure and authorizations to operate as a utility."[80] PG&E requests that the Commission rule, in I.15-08-019 (the "Safety Culture OII") or in this proceeding, that PG&E will not be forced to sell the gas business, to eliminate the holding company, or to municipalize, and that the Commission will not institute a review of or make modifications to the Utility's CPCN (except as provided in connection with the Enhanced Regulatory Oversight and Enforcement Process).

c) "[S]atisfactory resolution of claims for monetary fines or penalties under the California Pub. Util. Code for prepetition conduct."[81] There are various proceedings before the Commission that address potential monetary fines or penalties under the Public Utilities Code associated with the Utility's prepetition

[79] PG&E's Plan § 1.37(a) [3/9 Plan § 1.38(a)].

[80] PG&E's Plan § 1.37(b) [3/9 Plan § 1.38(b)].

[81] PG&E's Plan § 1.37(c) [3/9 Plan §1.38(c)].

conduct. In I.19-06-015 (the "Wildfire OII"), I.18-12-007 (the "Locate and Mark OII"), I.15-11-015 (the "Ex Parte OII"), and I.18-07-008 (the "Disconnection OII"), the Commission either has approved or has been presented with settlement agreements entered into by PG&E and various parties. Commission approval of any settlements not yet approved would be satisfactory for purposes of this provision of PG&E's Plan. With respect to the proposed settlement in the Wildfire OII, the Presiding Officer's Decision would require changes to the proposed settlement. These changes are not acceptable to PG&E, and PG&E intends to appeal and/or seek other relief in relation to the Presiding Officer's Decision. The Amended Plan filed March 9, 2020 removes the "satisfactory resolution" of that proceeding from the CPUC Approval conditions precedent to Plan confirmation but retains it for the Plan Effective Date.[82] Accordingly, a timely and satisfactory resolution of that proceeding is essential. PG&E remains optimistic that a satisfactory resolution of the Wildfire OII will be reached in advance of the Effective Date of PG&E's Plan.

III. FINANCIAL ISSUES (Scoping Memo § 4)

A. Plan Funding And Financial Health (Scoping Memo §§ 4.3, 4.6, 4.7)

PG&E's Plan expeditiously and fairly compensates wildfire victims and positions PG&E for financial health upon emergence, including through substantial equity contributions at exit, commitments to additional equity contributions after emergence, and a clear path towards further improving credit ratings over time. Accordingly, the Commission should find that PG&E's Plan

[82] PG&E's Plan [3/9 Plan §§ 9.1(c), 9.2 (l)].

and its governance structure upon emergence are acceptable in light of PG&E's recent financial condition and therefore satisfy Section 3292(b)(1)(C).[83]

1. Major Financial Obstacles Precipitated The Chapter 11 Filings.

PG&E's Chapter 11 filings were necessitated by a confluence of factors, including the catastrophic wildfires that occurred in Northern California in 2017 and 2018 and PG&E's potential liabilities arising therefrom. By late January 2019, the multitude of pending and anticipated claims and lawsuits made it abundantly clear that PG&E could not address those claims and potential liabilities in the ordinary course while continuing to deliver safe, reliable, affordable and clean energy to its 16 million customers and remaining economically viable. Chapter 11 protection represented the only practical alternative under the stark circumstances facing PG&E, and taking this step was in the best interests of all PG&E stakeholders, including customers, employees, wildfire victims and claimants, other creditors, employees, and shareholders.

Before filing for Chapter 11, PG&E faced uncertain but mounting liabilities in connection with the devastating 2017 and 2018 wildfires. For instance, shortly before the Chapter 11 filings, PG&E's Form 8-K filed on January 14, 2019 with the United States Securities and Exchange Commission noted that PG&E's potential liability with respect to the 2017 and 2018 Northern California wildfires could exceed $30 billion, without taking into account potential punitive damages, fines and penalties or damages with respect to future

[83] "The commission has approved the reorganization plan and other documents resolving the insolvency proceeding, including the electrical corporation's resulting governance structure *as being acceptable in light of the electrical corporation's* safety history, criminal probation, *recent financial condition*, and other factors deemed relevant by the commission." Pub. Util. Code § 3292(b)(1)(C) (emphasis added).

claims.[84] Meanwhile, PG&E experienced an uninterrupted string of credit rating downgrades.[85] The other California investor-owned utilities likewise suffered ratings downgrades during this period due to wildfire risk, inverse condemnation, and other exogenous considerations.[86] For PG&E, this culminated in a sub-investment grade rating for the Utility by early January 2019 before PG&E filed for Chapter 11.[87]

2. PG&E's Plan Resolves The Chapter 11 Filings In A Fair And Beneficial Manner.

PG&E's Plan is set to resolve the Chapter 11 filings after just 18 months and in a manner that is supported by the major stakeholders in the bankruptcy process. Most critically, the Plan resolves PG&E's substantial prepetition liabilities, providing fair and expeditious compensation to wildfire victims. In total, the "Plan provides for the payment of $25.5 billion in settlement of Fire Claims, which are defined as any past, present, or future claims related to specified wildfires

[84] Jan. 14, 2019 Form 8-K.

[85] *E.g.*, EPUC-01, Attachment 4 (S&P Dec. 22, 2017), Attachment 5 (S&P, Feb. 22, 2018), Attachment 6 (S&P June 13, 2018), Attachment 7 (S&P Sept. 5, 2018), Attachment 8 (S&P Nov. 15, 2018), Attachment 9 (Moody's Dec. 21, 2017), Attachment 10 (Moody's Mar. 19, 2018), Attachment 11 (Moody's Sept. 6, 2018), Attachment 12 (Moody's Nov. 15, 2018); CCSF-01, Attachment L (Moody's Jan. 12, 2019); Feb. 28, 2020 Tr. at 648:13-649:26 (cross-examination testimony of Mr. Wells); Mar. 4, 2020 Tr. at 1349-50 (cross-examination testimony of Michael P. Gorman).

[86] PG&E-X-03 (Moody's, *Negative Outlook for SCE and SDG&E*, Apr. 11, 2018) at 1 ("SCE's credit profile is weighed down by … increasing inverse condemnation risk exposure" which "has caused us to reassess our view of the credit supportiveness of the regulatory environment in California"); *id.* at 2 ("The rising risk associated with the wildfires and other severe weather events have translated into higher regulatory risk for investor-owned utilities in California due to inverse condemnation exposure and the uncertainty that they will be able to recover related costs from ratepayers, as evidenced by the SDG&E's disallowance in its 2007 wildfire case"); PG&E-X-05 (SDG&E 2020 Cost of Capital Testimony, Apr. 2019) at BM-11 (illustrating decrease in SDG&E credit ratings over time since 2017).

[87] CCSF-01, Attachment L at 1 ("Pacific Gas & Electric Company's (PG&E) credit profile reflects the very challenging political environment as potential liabilities grow, liquidity reserves decline and access to capital is uncertain following severe wildfires in its service territory over the last two years. … [T]he rating now incorporates a more onerous political and legislative environment due to the continued exposure related to potential future wildfire costs under inverse condemnation. The potential for these future risks to materialize is high due to climate change and a growing population in fire-prone areas."); Mar. 4, 2020 Tr. at 1349-50 (cross-examination testimony of Mr. Gorman).

that occurred in Northern California in 2015 through 2018."[88] That amount is split among four different classes of Fire Claims.[89] This expeditious compensation to wildfire victims and other wildfire claimants avoids a lengthy, costly and adversarial trial process on individual claims. This resolution also enables the Bankruptcy Court to make its determination under AB 1054 that the Plan "provides funding or establishes reserves for, provides for assumption of, or otherwise provides for satisfying any prepetition wildfire claims asserted against the electrical corporation in the insolvency proceeding in the amounts agreed upon in any pre-insolvency proceeding settlement agreements or any post-insolvency settlement agreements, authorized by the court through an estimation process or otherwise allowed by the court."[90]

The Bankruptcy Code also provided PG&E the unique opportunity to elect whether to repay or reinstate its prepetition debt, allowing PG&E to negotiate the Noteholder RSA.[91] Any similar refinancing pursued outside the Chapter 11 context would have required significant make-whole premiums and would not have been cost-effective for customers.[92] Pursuant to that agreement, and as contemplated by PG&E's Plan, the Utility is able to refinance certain high-coupon, long-dated prepetition senior notes at significantly lower interest rates, yielding

[88] PG&E-01 at 2-5:22-25 (opening testimony of Mr. Wells).

[89] PG&E-01 at 2-5 – 2-8 (opening testimony of Mr. Wells) (describing the four classes as (1) Fire Victim Claims; (2) Public Entities Wildfire Claims; (3) Subrogation Wildfire Claims; and (4) Subrogation Butte Fire Claims).

[90] Pub. Util. Code § 3292(b)(1)(B).

[91] *See* 11 U.S.C. § 1124; *see also* 11 U.S.C. §§ 101(5), 1123, 1141.

[92] *See, e.g.*, Mar. 4, 2020 Tr. at 1286:5-16 (cross-examination testimony of R. Thomas Beach) (in response to a question suggesting PG&E could not have done the refinancing absent the bankruptcy, Mr. Beach responded: "Yes. I'll agree that that was the result of the bankruptcy."); *id.* at 1335:13-26 (cross-examination testimony of Mr. Gorman) (Mr. Gorman stating: "I acknowledge that there may have been interest rate savings associated with high coupon debt that you were able to refinance down to market levels that you may not have been able to economically refinance absent the bankruptcy."); *see also* Mar. 3, 2020 Tr. at 1145:1–13 (cross-examination testimony of Mr. Kenney) ("[B]y virtue of us refinancing certain debt, [the Plan] will actually result in a decrease [in rates]").

substantial interest cost savings for the Utility and ultimately for the benefit of customers.[93] The Noteholder RSA provides for refinancing of certain other prepetition senior notes of the Utility with near-term maturities as well as funded bank debt (including revolving loans, term loans, and the pollution control bonds). "In total, the Noteholder RSA provides for the issuance of $11.85 billion in debt as committed and permanent financing at favorable predetermined rates. If PG&E were to issue that amount of debt in the market, it would incur underwriting fees of approximately $85 million, in addition to rating agency, legal and other issuance fees, and such a market issuance would not benefit from the certainty and protection from interest rate risk provided by the Noteholder RSA."[94] In addition, "[o]ther prepetition Utility long-term debt totaling approximately $9.575 billion will be reinstated; this includes relatively low-coupon prepetition long-term debt for which refinancing would not have been cost effective."[95]

3. PG&E's Plan Will Be Funded By A Historic Amount Of New Equity And Low-Cost Debt.

PG&E's Plan funding "will consist of new and reinstated debt and equity for both the Utility and PG&E Corporation as well as other sources of funding anticipated to total approximately $57.65 billion to enable PG&E to emerge from its Chapter 11 cases."[96] PG&E anticipates the following sources and uses:[97]

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[93] PG&E-01 at 2-18 – 2-22 (opening testimony of Mr. Wells); PG&E-07 at 2-19 – 2-22A; PG&E-08 (PG&E's Clarifications in Response to Feb. 21, 2020 Testimony of Other Parties, dated Feb. 26, 2020), at 5; PG&E-11 (estimating PG&E's anticipated cost of debt upon emergence) (2_25_20UpdatedPlanOfReorganizationOII-2019_DR_TURN_018-Q02Atch01Cost of Debt and Maturities.xlsx); PG&E-15 (calculating interest rate cost savings) (2_24_20RevisedPlanOfReorganizationOII-2019_DR_CLECA_01-Q02_Chapter 2 debt savings calc.xlsx).

[94] PG&E-07 at 2-19 (Amendments to opening testimony of Mr. Wells).

[95] PG&E-01 at 2-19:3-6 (opening testimony of Mr. Wells).

[96] *Id.* at 2-15.

[97] *Id.* at 2-2.

TABLE 2.1: SOURCES & USES

SOURCES		USES	
New Equity in PG&E Corporation	$15.75 billion	**Fire Claims**	**$24.15 billion**[1]
New money equity raise	$9 billion	**Contribution to Wildfire Fund**	**$5 billion**
Equity issued to Fire Victim Trust	$6.75 billion	**Debtor-In-Possession Financing**	**$2 billion**
New PG&E Corporation Debt	**$4.75 billion**	**Prepetition Debt**	**$22.18 billion**
Reinstated Utility Debt	**$9.575 billion**	**Trade Claims and Other Costs**	**$2.3 billion**
New Utility Debt	**$23.775 billion**	**Accrued Interest**	**$1.27 billion**
Refinancing of Pollution Control Bonds	$0.1 billion	**Cash**	**$0.75 billion**
Noteholder RSA debt	$11.85 billion	**Total Uses**	**$57.65 billion**
New debt	$5.825 billion		
Temporary Utility Debt	$6 billion		
Insurance Proceeds	**$2.2 billion**		
Cash at Emergence	**$1.6 billion**		
Total Sources	**$57.65 billion**		

This Plan funding includes a historic amount of new equity in PG&E, which will ensure that PG&E is sufficiently capitalized as it emerges from Chapter 11. The anticipated equity raise in connection with PG&E's emergence will be the largest capital raise in the Utility industry and one of the largest in all of corporate history.[98] PG&E's post-emergence financial plan contemplates additional equity contributions even beyond the sizeable infusion at exit. In sum, PG&E expects to issue $9 billion of equity to fund its Plan (in addition to the $6.75 billion equity payment to the Fire Victim Trust), and also commits to $6 billion of equity contributions at the Utility over time.[99] These additional equity contributions will be used to deleverage the Utility

[98] Feb. 28, 2020 Tr. at 581 (cross-examination testimony of Mr. Wells); *id.* at 667:11-12 (PG&E "ha[s] put forward a plan that is fully capitalized.").

[99] *Id.* at 575-76, 667.

and pay down the Temporary Utility debt.[100] The significant amount of new equity, both upon emergence and over time, sufficiently capitalizes PG&E to be in line with its investment-grade utility peers including in California.[101]

PG&E's plan funding also includes reinstated, relatively low-coupon Utility debt, refinanced, lower-cost debt under the Noteholder RSA, new Utility and PG&E Corporation debt that will be issued in the market at exit, and the Temporary Utility debt. Under its Plan, PG&E will pay wildfire claims primarily with a mix of equity and the Temporary Utility debt. This payment is expected to result in significant net operating losses ("NOLs"), which are tax benefits that arise because wildfire claims costs are deductible business expenses. NOLs are generated when a business's tax deductions are more than its taxable income in a given year. The NOLs then can be used in future years to reduce PG&E's tax liabilities, resulting in cash flows associated with those future tax liabilities avoided through use of the NOLs. The NOLs (and associated cash flows) constitute a unique and valuable shareholder asset that may not be fully reflected in capitalization ratios, the balance sheet, or other metrics.[102] Importantly, this shareholder asset counterbalances the incremental Temporary Utility debt from a leverage perspective; practically, associated cash flows will be used to delever over time after emerging,

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[100] *Id.* at 575-76 (cross-examination testimony of Mr. Wells); *see* PG&E-01 at 2-17 – 2-18 (opening testimony of Mr. Wells) ("PG&E anticipates that $6 billion in Temporary Utility debt would be used to pay wildfire claims. This portion of the Utility's debt would be paid off, if approved by the Commission, from the proceeds of a post-emergence rate-neutral $7 billion securitization transaction. Alternatively, the $6 billion would be retired with proceeds from shareholders. PG&E plans to use cash flows from NOLs to support the $6 billion of Utility debt used to fund wildfire claims.")

[101] *E.g.*, PG&E-01 at 3-8 (opening testimony of Mr. Plaster); Feb. 26, 2020 Tr. at 204:24-26 (cross-examination testimony of Mr. Johnson); Feb. 26, 2020 Tr. at 302:14-27 (cross-examination testimony of Mr. Plaster); Feb. 28, 2020 Tr. at 527-28, 558 (cross-examination testimony of Mr. Wells).

[102] Mar. 4, 2020 Tr. at 1378-79 (cross-examination testimony of Mr. Gorman). *See, e.g.*, D.84-05-036 (1984) ("Tax losses are assets that belong to the shareholders who are responsible for the expenses which created the tax loss, and thus are entitled to the related tax benefit"); D.14-08-032 (2014) ("[W]hen deductions are not part of utility cost of service but derive from shareholder funds, the deductions are the property of shareholders").

in connection with the contemplated securitization transaction or by paying down the Temporary Utility debt. While not shown on the balance sheet, lenders will understand that the NOL asset counterbalances the Temporary Utility debt (and will be used to take out that debt, whether or not in connection with securitization). Critically, intervenors support PG&E's proposed use of the NOLs as a shareholder asset that can be used to reduce leverage.[103]

Questions were raised, both in the testimony of other parties and during the hearings, about PG&E's leverage at exit; for example, A4NR argued that "the PG&E Plan is an amalgam of overleverage … [and] insufficient new equity,"[104] and CCSF pointed to certain "risks" associated with higher leverage.[105] Generally, intervenors did not elaborate on these arguments or proffer support for alternative financing scenarios that would assuage these concerns.[106] Indeed, there is no record evidence supporting a feasible alternative proposal for how to finance PG&E's exit from Chapter 11 and provide expeditious and fair compensation to wildfire victims.

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[103] *See* Mar. 3, 2020 Tr. at 1221-22 (cross-examination testimony of Margaret A. Meal) ("Q. And you would support the use of the NOLs [to pay down the temporary utility debt] because that would help reduce leverage? A. Correct.").

See also Mar. 4, 2020 Tr. at 1378:1-1379:2 (cross-examination testimony of Mr. Gorman):

"Q. [R]egardless of securitization, PG&E will use the net operating losses to pay down the temporary utility debts, so those net operating losses are an asset of the company; correct?

A Yeah, they will use them to reduce the amount of income tax they will ultimately pay to government tax authorities, yes.

Q So it's a shareholder asset?

A The shareholders incurred the loss, the write-off, and they are entitled to the full benefit of the taxes except for their obligation to pay off this temporary utility debt."

[104] A4NR-02 at 14.

[105] *E.g.*, CCSF-01 at 9:12–11:15 (reply testimony of Ms. Meal).

[106] *E.g.*, Mar. 3, 2020 Tr. at 1186–1187 (cross-examination testimony of Ms. Meal) ("Q. What would PG&E's financial strength or flexibility have been had PG&E not filed for bankruptcy in January 2019? A. [T]he difficulty I'm having with that question is I don't know what PG&E would have done absent the bankruptcy. Q. And so therefore you have no opinion? A. That's correct.").

More importantly, these concerns about leverage and capitalization ignore five critical elements of PG&E's Plan and post-emergence financial profile. First, PG&E's Plan provides for a historic amount of new equity (particularly remarkable given looming market uncertainty caused by recent events).[107] Second, PG&E's quantitative metrics at exit will be in line with industry peers, including SCE, and consistent with an investment grade issuer credit rating.[108] Indeed, as John Plaster testified, PG&E's "financial metrics" will "be much stronger than the ultimate rating [PG&E] would receive."[109] Third, as already described, PG&E has committed to additional future equity contributions over time, including using the NOLs to pay down the Temporary Utility debt. Fourth, the NOLs are a unique shareholder asset that is not reflected in rate base and presently counterbalances the Temporary Utility debt. Shareholders typically own rate base assets, which are reflected in a utility's cost of service and form the basis of the overall rate of return. However, the NOLs constitute a substantial asset owned by shareholders and not reflected in rate base and, for this reason, are an unusual feature of PG&E's post-emergence financial profile. Fifth, PG&E's financial projections also reflect the financing of PG&E's shareholder-funded contributions to the Wildfire Fund, a statutory requirement under AB 1054

[107] Feb. 28, 2020 Tr. at 554 (cross-examination testimony of Mr. Wells) ("we've seen incredible disruption this week with the Corona virus [*sic*]").

[108] Feb. 26, 2020 Tr. at 204:24-26 (cross-examination testimony of Mr. Johnson) ("My recollection is that the leverage level is about consistent with Southern Cal Edison."); Feb. 26, 2020 Tr. at 302:14-27 (cross-examination testimony of Mr. Plaster) ("I then review the financial plan that the company filed with the Commission and looked at the leverage metrics on that. And I compared the business risk into the two closest comps, the two other California utilities. … I believe that the agencies will initially be more conservative around business risk for PG&E than it is for the other two companies. But that their leverage metrics, you know, are aligned with investment grade credit metrics."); PG&E-01 at 3-8 (opening testimony of Mr. Plaster) ("Under the contemplated PG&E Plan, PG&E's leverage profile falls within the investment grade category for the broad regulated utility sector."); Feb. 28, 2020 Tr. at 558:5-10 (cross-examination testimony of Mr. Wells) ("What I was trying to convey with that statement is that on a unsecured and secured basis, I do believe that the quantitative metrics the company is proposing under its financial plan would qualify for investment grade."); Feb. 28, 2020 Tr. at 527-28 (cross-examination testimony of Mr. Wells).

[109] Feb. 26, 2020 Tr. at 278:19-23 (cross-examination testimony of Mr. Plaster).

associated with participation in the Wildfire Fund[110] that is unrelated to PG&E's bankruptcy and broadly applicable to all participating utilities.

Despite these considerations, CCSF criticizes the leverage under PG&E's Plan by comparing PG&E's ratio of total debt to rate base upon emergence to that same ratio over the 2016-2018 period.[111] But any such comparison must account for the fact that some debt upon emergence will not actually fund rate base. Specifically, $2.5 billion of Utility debt will be used for PG&E's contributions to the Wildfire Fund and $6 billion of Temporary Utility debt will pay wildfire claims, and the latter is counterbalanced by a shareholder asset—the NOLs. Once that debt is excluded from the ratio, PG&E's debt-to-rate-base metric aligns with CCSF's proposed 2016-2018 baseline.[112]

4. The Plan Enables PG&E To Raise The Debt And Equity Needed For Exit.

PG&E initially filed for Chapter 11 in part to restore financial stability and assure access to the capital and resources necessary to sustain and support PG&E's ongoing operations and continue investing in its systems infrastructure and critical safety and wildfire prevention initiatives. The protections of Chapter 11 and the debtor-in-possession financing have met these needs during the bankruptcy process. By resolving PG&E's substantial prepetition liabilities and refinancing high-coupon prepetition debt, the Plan restores PG&E to a position of financial health. Since "PG&E's Plan positions the Utility as financeable and financially healthy upon emergence," PG&E "is confident that it will be able to attract the capital, both debt and equity,

[110] *See* Pub. Util. Code §§ 3280(b), (i), 3292(a).

[111] CCSF-01 at 7, tbl.2; *see also* CCSF-01, Attachment B.

[112] Mar. 3, 2020 Tr. at 1202-1204 (cross-examination testimony of Ms. Meal).

needed to fund PG&E's Plan and to maintain ready access to capital markets after emergence" in order to meet its ongoing operational needs.[113]

Utilities across the country, and in California specifically, generally benefit from strong credit ratings for their debt based on "stable cash flows, a monopoly franchise, and a predictable regulatory environment."[114] This, in turn, assures broad and deep access to debt markets.[115] However, in recent years, California utilities and PG&E specifically have seen a significant erosion in their credit standing. As intervenors note, PG&E held a position of relative financial strength with investment grade credit ratings in 2017.[116] Yet, according to CCSF, this also was a time when "PG&E's risk exposure to wildfires was not yet widely recognized," including by financial markets.[117] The devastating 2017 and 2018 wildfires placed this latent risk exposure in stark relief and, together with application of California's inverse condemnation law and the Commission's decision denying the reasonableness and rate recovery of SDG&E's wildfire claims recorded in its Wildfire Expense Memorandum Account in late 2017,[118] caused a significant shift in how financial markets and rating agencies view the business risk for electric utilities in California.[119] As noted above, this realignment recognizing the wildfire and related risks facing utilities in California was not limited to PG&E. SCE and SDG&E also experienced

[113] PG&E-01 at 2-23 (opening testimony of Mr. Wells).

[114] PG&E-01 at 3-5 (opening testimony of Mr. Plaster).

[115] PG&E-01 at 3-11 (opening testimony of Mr. Plaster).

[116] CCSF-01 at 8 (reply testimony of Ms. Meal); TURN-EPUC-IS-02 at 21:8–12 (reply testimony of Mr. Gorman); *see also* JCCA-01 at 24:9–10 (reply testimony of Mr. Beach) (noting that Mr. Plaster "does not state that PG&E will return immediately to the credit ratings that it enjoyed before bankruptcy").

[117] CCSF-01 at 7:17-18 (reply testimony of Ms. Meal).

[118] PG&E-X-03; CCSF-01, Attachment L at 5.

[119] Feb. 28, 2020 Tr. at 559-60, 662, 675-76 (cross-examination testimony of Mr. Wells); PG&E-01 at 3-5 (opening testimony of Mr. Plaster).

downgrades in their credit ratings over the same 2018-2019 period.[120] Passage of AB 1054 has had a net positive effect on credit ratings and partially addresses the negative outlook for electric utilities in California. Yet, for example, absent further information regarding AB 1054's implementation, rating agencies have not yet increased SCE's credit rating.[121] Accordingly, AB 1054 has brought much needed stability to California utilities' financial outlook, though "credit outlook remains contingent on constructive regulatory implementation of the legislation."[122]

Given this context, PG&E expects to emerge with quantitative metrics comparable to its peers and in line with an investment grade rating.[123] PG&E also expects to receive an investment grade rating for its secured debt at exit,[124] though ratings on unsecured debt are anticipated to be rated below investment grade at exit. This reflects the potential for rating agencies' assessment of PG&E's qualitative business risk, not its quantitative metrics.[125] PG&E plans to issue investment grade secured debt, including first mortgage bonds, for its exit financing.[126] Secured first-mortgage-bond debt is a common structure for utilities given the

[120] PG&E-X-05 at BM-11 (noting SDG&E credit ratings from 2017-2019); PG&E-X-03; Mar. 3, 2020 Tr. at 1200 (cross-examination testimony of Ms. Meal); Mar. 4, 2020 Tr. at 1347-48 (cross-examination testimony of Mr. Gorman).

[121] Feb. 28, 2020 Tr. at 559-60 (cross-examination testimony of Mr. Wells).

[122] PG&E-01 at 3-5 (opening testimony of Mr. Plaster); *id.* at 3-5 – 3-6.

[123] *E.g.*, PG&E-01 at 3-8 (opening testimony of Mr. Plaster); Feb. 26, 2020 Tr. at 204:24-26 (cross-examination testimony of Mr. Johnson); Feb. 26, 2020 Tr. at 302:14-27 (cross-examination testimony of Mr. Plaster); Feb. 28, 2020 Tr. at 527-28, 558 (cross-examination testimony of Mr. Wells).

[124] Feb. 26, 2020 Tr. at 279 (cross-examination testimony of Mr. Plaster); Feb. 28, 2020 Tr. at 526:18–26 (cross-examination testimony of Mr. Wells); PG&E-01 at 2-3:12–17 (opening testimony of Mr. Wells), 3-1:11–13 (opening testimony of Mr. Plaster).

[125] Feb. 26, 2020 Tr. at 302:22–27 (cross-examination testimony of Mr. Plaster); PG&E-01 at 3-7 – 3-8 (opening testimony of Mr. Plaster) ("Under the contemplated PG&E Plan, PG&E's leverage profile falls within the investment grade category for the broad regulated utility sector."); Feb. 28, 2020 Tr. at 527-28 (cross-examination testimony of Mr. Wells).

[126] PG&E-01 at 3-8 (opening testimony of Mr. Plaster);

relative cost efficiencies.[127] Indeed, even "many utilities that have high investment grade ratings make the determination to issue first mortgage bonds to access the market on a more cost-efficient basis."[128] There is healthy demand for secured utility debt and at favorable rates.[129] In Mr. Plaster's opinion, "PG&E will be able to issue investment grade rated first mortgage bonds that will attract more than enough capital from institutional investors to fund PG&E's Plan and its capital needs upon emergence."[130] Moreover, "the Noteholder RSA provides significant certainty, and committed financing on reasonable terms and conditions, for the vast majority of the Utility's long-term debt included in the Plan funding."[131] And, for a portion of the contemplated debt issuance in the market, PG&E also has secured a "bridge" facility that likewise "is committed financing" and "provides significant certainty to PG&E" that it will be able to issue debt at exit "even if debt market conditions deteriorate."[132]

PG&E also has obtained equity "'backstop' commitments to ensure that sufficient funds at an acceptable price will be available when the Plan becomes effective, even if market conditions deteriorate."[133] These "commitments demonstrate robust interest by investors to invest equity in PG&E Corporation and provide certainty that PG&E will have sufficient equity to consummate PG&E's Plan for emergence."[134] The assurance provided by these commitments

[127] PG&E-01 at 3-13 (opening testimony of Mr. Plaster); Feb. 26, 2020 Tr. at 283:3-5 (cross-examination testimony of Mr. Plaster) ("issu[ing]first mortgage bonds" is "a very common practice in the utility sector").

[128] Feb. 26, 2020 Tr. at 283:6-10 (cross-examination testimony of Mr. Plaster).

[129] PG&E-01 at 3-11 – 3-13 (opening testimony of Mr. Plaster).

[130] PG&E-01 at 3-14 (opening testimony of Mr. Plaster).

[131] PG&E-01 at 2-23 (opening testimony of Mr. Wells).

[132] PG&E-01 at 2-36 (opening testimony of Mr. Wells).

[133] PG&E-01 at 2-24 (opening testimony of Mr. Wells).

[134] PG&E-01 at 2-24 (opening testimony of Mr. Wells).

is particularly significant given recent market uncertainty,[135] and PG&E shareholders, not customers, will be responsible for the fees associated with these "backstop" commitments.[136] Even so, "PG&E anticipates effectuating the equity issuance contemplated by PG&E's Plan through market transactions in order to obtain the most favorable pricing and other terms."[137]

5. The Plan Provides PG&E A Clear Path Toward Improving Its Credit Ratings And Maintaining Access to Capital Markets After Emergence.

After emerging, PG&E "expects to have a clear path towards further improving its credit ratings over time,"[138] and improved credit ratings will bring even more robust access to debt and equity capital. Improvement in PG&E's credit rating "will depend not only on PG&E's future operational and financial performance but also on constructive implementation of the new statutory and regulatory regime, including AB 1054, by the Commission, and the Utility's participation in the Wildfire Fund."[139] As Mr. Wells testified, PG&E carries the "burden of proving that we can execute on our financial plan post emergence."[140] As Mr. Plaster testified, he "believe[s] that the [rating] agencies will initially be more conservative around business risk for PG&E than it is for the other two companies [SCE and SDG&E][,] [b]ut that [PG&E's] leverage metrics … are aligned with investment grade credit metrics."[141] More broadly, the outlook for PG&E and the other California utilities also should improve "particularly as the

[135] Feb. 28, 2020 Tr. at 554 (cross-examination testimony of Mr. Wells) ("we've seen incredible disruption this week with the Corona virus").

[136] PG&E-08 at 2 ("PG&E will not seek recovery of … equity backstop fees").

[137] PG&E-01 at 2-24 (opening testimony of Mr. Wells).

[138] PG&E-01 at 2-23 (opening testimony of Mr. Wells).

[139] PG&E-01 at 2-23 (opening testimony of Mr. Wells).

[140] Feb. 28, 2020 Tr. at 560:19-21 (cross-examination testimony of Mr. Wells).

[141] Feb. 26, 2020 Tr. at 302 (cross-examination testimony of Mr. Plaster); *see also* PG&E-01 at 3-7 – 3-8 (opening testimony of Mr. Plaster).

rating agencies gain comfort with the consistent regulatory implementation of AB 1054 and system hardening and safety initiatives prove effective."[142] Thus, greater certainty regarding PG&E's future operational and financial performance and implementation of AB 1054 provide PG&E "a clear path towards further improving its credit ratings over time."[143] Moreover, PG&E's preferred path of a post-emergence, rate-neutral securitization transaction would further support this improvement[144]—a fact that intervenors also recognize.[145]

Given PG&E's financial position upon emergence and its path towards further improving its credit ratings, "PG&E is confident that it will be able … to maintain ready access to capital markets after emergence."[146] PG&E's ability to issue investment grade secured bonds will provide robust access to debt markets after emergence.[147] And given the demand for the "backstop" commitments and healthy demand for utility equity in general, PG&E also anticipates ample access to equity markets after emerging.[148]

[142] PG&E-01 at 3-20 (opening testimony of Mr. Plaster).

[143] PG&E-01 at 2-23 (opening testimony of Mr. Wells).

[144] As described further below, securitization can improve both quantitative metrics (*see* Feb. 28, 2020 Tr. at 670-71 (cross-examination testimony of Mr. Wells); *id.* at 674-75 (redirect examination testimony of Mr. Wells)) as well as the rating agencies' qualitative assessment of PG&E's business risk (*see id.* at 675-76 (redirect examination testimony of Mr. Wells)).

[145] Mar. 3, 2020 Tr. at 1220:21-25 (cross-examination testimony of Ms. Meal) (Q. So securitization could have a positive impact on both quantitative and qualitative factors affecting PG&E's credit rating; correct? A. It would vary depending on the specifics of the situation, but, yes.); Mar. 2, 2020 Tr. at 1037:22–1039:22 (cross-examination testimony of Catherine E. Yap); CLECA-01 at 23:1-2 ("I appreciate the fact that securitizing debt has the potential to improve PG&E's credit rating and correspondingly reduce overall debt costs").

[146] PG&E-01 at 2-23 (opening testimony of Mr. Wells).

[147] PG&E-01 at 2-23 (opening testimony of Mr. Wells); PG&E-01 at 3-14 (opening testimony of Mr. Plaster).

[148] PG&E-01 at 2-24 (opening testimony of Mr. Wells); PG&E-01 at 3-20 (opening testimony of Mr. Plaster).

6. PG&E's Contemplated Securitization Would Further Support PG&E's Path To An Investment-Grade Issuer Rating.

Separate from PG&E's Plan and the plan funding, PG&E also contemplates a single post-emergence securitization transaction of approximately $7 billion for wildfire claims costs that would be rate-neutral, on average, to customers.[149] The securitization would replace the Temporary Utility debt and is PG&E's preferred path for financing these claims costs in a cost-efficient, rate-neutral, and customer-protective manner. If the Commission approves the proposed securitization as requested, PG&E will make two critical customer-protective commitments, as will be repeated in PG&E's forthcoming securitization application.

1. The securitization will be neutral, on average, to customers. Since PG&E's Plan does not include or depend on this securitization, it is not subject to the requirements of AB 1054, but PG&E would nonetheless commit to rate neutrality.
2. If the Commission approves the proposed securitization as requested, PG&E will not seek any other recovery of 2017 or 2018 wildfire claims costs. The Plan is already rate-neutral because the Plan does not propose to recover 2017 or 2018 wildfire claims costs from customers.

Approval of the transaction would inure to the benefit of both PG&E and customers because of these commitments and otherwise. All else equal, securitization's potential to improve the Utility's credit rating "will reduce the cost of financing over time for the benefit of all customers," and approval of the transaction also "will provide for the acceleration of the deferred payment to the Fire Victim Trust for the benefit of individual wildfire victims and the other beneficiaries of that trust."[150] Securitization is more cost-efficient (more favorable rates)

[149] PG&E-01 at 2-15, 2-17 – 2-18 (opening testimony of Mr. Wells); PG&E-08 at 3.

[150] PG&E-01 at 2-2, 2-15 (opening testimony of Mr. Wells).

than traditional forms of utility debt financing[151] and would provide significant benefits—both quantitative and qualitative—with respect to PG&E's credit rating. This would support PG&E's path to an investment-grade issuer rating. Quantitatively, securitization reduces debt from the balance sheet under Standard & Poor's methodology, improving key financial metrics assessed by rating agencies.[152] Qualitatively, approval of such a securitization transaction could improve the assessment of the business risk and regulatory climate, sending a positive signal to financial markets.[153]

7. Section 854: The Plan Will Improve PG&E's Financial Condition and Benefit State and Local Economies and Communities. (Scoping Memo § 4.6)

As noted, the Administrative Law Judge's Ruling on Public Utilities Code Section 854 ruled that specific criteria from Section 854 would be considered — not as mandatory requirements, but as part of the Commission's general public interest review of PG&E's Plan — including the criteria that the Plan "[m]aintain or improve the financial condition of the resulting public utility doing business in the state" and "[b]e beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility."[154]

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[151] PG&E-01 at 3-4.

[152] PG&E-X-04 (S&P, *Key Credit Factors for the Regulated Utilities Industry* (Nov. 19, 2013) at 16 ¶ 69 –17 ¶ 71 (describing off-balance-sheet treatment of securitized debt); Feb. 28, 2020 Tr. at 670-71 (cross-examination testimony of Mr. Wells); *id.* at 674-75 (redirect examination testimony of Mr. Wells).

[153] Feb. 28, 2020 Tr. at 675-76 (redirect examination testimony of Mr. Wells); Mar. 3, 2020 Tr. at 1220 (cross-examination testimony of Ms. Meal); Mar. 2, 2020 Tr. at 1037:22–1039:22 (cross-examination testimony of Ms. Yap); CLECA-01 at 23:1–2. *See also* CCSF-01 Attachment H (Moody's, *Rating Methodology: Regulated Electric and Gas Utilities*, June 23, 2017) at 44–45 (describing potential general benefits of securitization); *id.* at 6–11 (describing how supportive regulatory decisions can favorably affect rating agency evaluation); PG&E-X-04 (S&P, *Key Credit Factors for the Regulated Utilities Industry* (Nov. 19, 2013)) at 6 ¶ 21–8 ¶ 30 ("We base our assessment of the regulatory framework's relative credit supportiveness on our view of how regulatory stability, efficiency of tariff setting procedures, financial stability, and regulatory independence protect a utility's credit quality and its ability to recover its costs and earn a timely return.").

[154] Pub. Util. Code § 854(c)(1), (6); Administrative Law Judge's Ruling on Public Utilities Code Sectin 854 (Nov. 27, 2019), at 11.

PG&E has demonstrated that its Plan satisfies these criteria, and no party has put forth evidence to the contrary.

PG&E was in financial distress before filing for Chapter 11. Emergence from bankruptcy pursuant to PG&E's Plan will allow PG&E to provide expeditious compensation to wildfire victims, satisfy its prepetition obligations, raise the necessary funds for emergence, and strengthen its financial position going forward.[155] This represents a marked improvement to PG&E's financial condition.

PG&E's Plan will also provide financial benefits to state and local economies and to communities. As described in Part II.D.1.b, PG&E's Plan provides for the satisfaction of Public Entities Wildfire Claims, which will provide compensation that will benefit local economies and communities. More broadly, emergence pursuant to PG&E's Plan will facilitate capital expenditures to improve the safety and reliability of PG&E's system, which will redound to the benefit of communities and the State as a whole, whose economies rely on access to energy.[156] Those capital expenditures also drive contributions in the form of property taxes and franchise fees to the counties and cities where PG&E owns and operates gas and electric infrastructure.[157] Interest rate savings that result from PG&E's Plan will be passed on to customers in the form of lower rates, which will also benefit local economies.

Thus, the Commission's approval of PG&E's Plan is supported by the applicable financial considerations of Section 854.

[155] PG&E-01 at 12-2 (opening testimony of Mr. Kenney).

[156] *Id.* at 12-5 (opening testimony of Mr. Kenney).

[157] *Id.*

8. The Record Overwhelmingly Supports Approving PG&E's Proposed Adjustments To Its Ratemaking Capital Structure.

The Utility will emerge from bankruptcy with a balanced capital structure and anticipates complying with the regulatory capital structure authorized in D.19-12-056, provided certain adjustments are made.[158] Specifically, PG&E has proposed three sets of adjustments consistent with the overarching goal of the ratemaking capital structure, which is to identify the mix of debt and equity funding for rate base.

First, consistent with Section 3292(g), "PG&E adjusts [the common equity balance] for the after-tax charge to earnings associated with [PG&E's anticipated contributions to the Wildfire Fund] but does not make any adjustments for the use of debt or equity funding" since PG&E has proposed to fund these contributions with a mixture of both debt and equity at levels consistent with PG&E's authorized capital structure.[159]

Second, "PG&E anticipates issuing Temporary Utility debt of $6 billion to pay wildfire claims. This debt would also not be used to finance assets in the Utility's rate base …. Accordingly, debt issued to pay claims should be excluded from the calculation of the debt portion of the capital structure. Also, the amount of the book value of equity must be increased by the after-tax amount of the claims paid that are not financed with equity, which is also equal to the after-tax amount of the debt issued to pay the claims."[160]

Third, PG&E intends to finance certain Community Wildfire Safety Program capital expenditures with securitized debt, consistent with PG&E's 2020 General Rate Case Settlement Agreement and Section 8386.3(e). "[A]ny such debt, including any conventional debt financing

[158] PG&E-01 at 2-21 – 2-22; PG&E-07 at 2-22 – 2-22A.

[159] PG&E-08 at 5-6; *see also* PG&E-01 at 2-21 – 2-22; PG&E-07 at 2-22 – 2-22A. *See* D.18-07-037 at 25-26.

[160] PG&E-01 at 2-22.

of these expenditures prior to refinancing with securitized debt, should be excluded from the calculation of the capital structure for compliance and ratemaking purposes."[161]

No party contested the basic principle put forward by PG&E regarding the objective of the regulatory capital structure. In fact, TURN, EPUC, and IS agree that, "in this case," PG&E's effort to reflect this overarching principle is "a reasonable objective."[162] In addition, no party disagreed or took issue with the first and third adjustments proposed by PG&E. Regarding the second proposed adjustment (for Temporary Utility debt), TURN, EPUC, and IS wanted additional clarification and, specifically, proposed to exclude the $6.75 billion of PG&E Corporation stock paid to the Fire Victim Trust. However, after the hearings, it appears that TURN, EPUC, IS and PG&E agree that, except insofar as the equity payment to the trust extinguishes the non-cash charge and thereby restores the common equity balance by removing the effect of the non-cash charge, the payment ultimately does not alter (and therefore is essentially excluded from[163]) the Utility's equity balance for ratemaking purposes.[164]

[161] PG&E-07 at 2-22 – 2-22A.

[162] TURN-EPUC-IS-02 at 25:5-7 (Reply Testimony of Mr. Gorman); Mar. 3, 2020 Tr. at 1246-47 (cross-examination testimony of Mr. Gorman) ("[I]n this case, I believe that's a reasonable objective.").

[163] Since the equity contribution itself has no effect on the Utility's equity balance (except insofar as it extinguishes the non-cash charge), technically there is nothing to "exclude." *See* TURN-EPUC-IS-02 at 25-26 (Reply Testimony of Mr. Gorman) ("The CPUC should require PG&E to adjust its common equity to reflect common equity capital that is being used to satisfy wildfire damage claims. … [T]his $6.75 billion of common equity capital should also be removed from the ratemaking capital structure, under the standard proposed by PG&E.").

[164] Mar. 4, 2020 Tr. at 1381-82 (cross-examination testimony of Mr. Gorman) ("With respect to the $6.75 billion, it does appear to be equity issues at parent company level. It may or may not have implications at the capital utility level, but to the extent it does, then that should be considered in forming the appropriate utility ratemaking cap structure. With respect to the write-offs of contributions in the trust or wildfire victim funds, to the extent it's non-cash write-off and it's funded by other vehicles such as the temporary utility debt, if the utility follows through with paying off that debt as quickly as possible, then I wouldn't oppose reversing those write-offs."); *see id.* at 1381-86.

Accordingly, the record in this proceeding overwhelmingly supports PG&E's proposed adjustments for calculating the ratemaking capital structure, and the Commission should confirm them.[165] The Commission's decision should determine and approve the following:

- PG&E's proposed capital structure adjustments as acceptable because they accurately measure the amounts of debt and equity that are financing rate base by removing the impacts of financing wildfire claims and the Wildfire Fund on the ratemaking capital structure. Specifically, in determining the ratemaking capital structure, authorize PG&E to:
  - Exclude the after-tax charge related to the amortization of the Utility's initial and subsequent contributions to the Wildfire Fund;
  - Exclude the $6 billion in Temporary Utility debt used to fund payment of wildfire claims;
  - Exclude the after-tax charge to equity resulting from wildfire charges;
  - Exclude from the ratemaking capital structure the conventional and securitized debt used to fund certain wildfire mitigation capital expenditures that are precluded from earning a return on equity, as provided for in Public Utilities Code Section 8386.3(e).

B. Rates And Rate Neutrality (Scoping Memo §§ 4.1, 4.4, 4.5)

For the Utility to be eligible to participate in the Wildfire Fund, the Commission must "determine[] that the reorganization plan and other documents resolving the insolvency proceeding are … neutral, on average, to the ratepayers of the electrical corporation."[166] The plain language of this provision directs the Commission to determine whether "the reorganization plan and other documents resolving the insolvency proceeding" cause customers to bear costs that they would not have borne but for PG&E's Plan. This provision does not

[165] Consistent with PG&E's prepared testimony, these proposed adjustments would "apply equally with respect to the ratemaking capital for purposes of the holding company conditions (*see* D.96-11-017 and D.19-12-056) as well as the affiliate transaction rules (*see* D.06-12-029 (Rule IX.B.)), including in connection with any dividends. Alternatively, the Commission could issue a waiver from compliance with the authorized capital structure as contemplated in A.19-02-016 for these same purposes." PG&E-01 at 2-21 n.47 (opening testimony of Mr. Wells).

[166] Pub. Util. Code § 3292(b)(1)(D).

preclude PG&E from recovering reasonable costs in the normal course, including rates reviewed as part of the General Rate Case or other proceedings. Instead, the provision was designed to ensure that the plan of reorganization (and the associated bankruptcy process) would not be used as a mechanism to force rate increases on customers that the Commission would not have time to meaningfully review due to the June 30, 2020 deadline set by AB 1054.

For example, if the reorganization plan included rate increases to fund wildfire claims, the Commission would be in the difficult position of having to decide on a compressed timeline whether to reject the plan or approve the rate increases—or else wildfire victims would not be timely compensated and the Utility would not be eligible to participate in the Wildfire Fund. The "neutral, on average" requirement was meant to prevent a situation of that kind. Accordingly, the key inquiry for the Commission is whether there is cost recovery directly linked to the reorganization plan or other documents resolving the bankruptcy proceeding. Cost recovery outside of that specific context does not raise the same concerns because the Commission may proceed with its normal review process.

1. PG&E's Plan Is Not Only "Neutral, On Average," But Creates Customer Benefits.

PG&E's Plan is "neutral, on average" because the Plan does not impose any net costs on customers. In fact, the Utility and its customers will be better off under PG&E's Plan than they would have been absent the bankruptcy because the Plan creates interest cost savings that will reduce rates going forward.

(a) PG&E's Plan Does Not Increase Rates.

PG&E's Plan does not by its terms increase rates, and no intervenor contends otherwise.[167] Unlike the situation AB 1054 sought to prevent, PG&E's Plan does not increase

[167] Mar. 2, 2020 Tr. at 1023:8-19 (cross-examination testimony of Ms. Yap) (confirming "the Plan of Reorganization doesn't propose costs per se except for the financing. I focused on that."); Mar. 3, 2020

rates to fund prepetition wildfire claims; rather, the Plan funds the settlement of such claims through a combination of equity and shareholder-funded debt. Although certain intervenors argue that PG&E should be precluded from seeking recovery of wildfire claims costs in the future,[168] that issue is not before the Commission because PG&E is not requesting recovery of such costs through its Plan, and there is no record that would justify such a decision. PG&E's preferred path after emergence is a rate-neutral, customer-protective securitization of approximately $7 billion. If the securitization is approved as requested, the Utility will not seek any other recovery of 2017 or 2018 wildfire claims costs. PG&E has not determined whether it would seek to recover wildfire claims costs in the event the securitization application is not approved,[169] but this potential future contingency is not governed by the rate neutrality provision of Section 3292, for two reasons: first, because it is not part of PG&E's Plan, and second, because by definition any future Commission decision authorizing recovery of such costs would be unrelated to the Plan but instead would be based on the application of standards for cost recovery that apply independent of the Chapter 11 case.

Tr. at 1188:17-26 (cross-examination testimony of Ms. Meal) (confirming no disagreement with PG&E's evaluation of rates); Mar. 4, 2020 Tr.at 1286:19-28 (cross-examination testimony of Mr. Beach) (confirming direct rate impacts of the Plan will be savings resulting from Cost of Capital update); *id.* at 1341:7-18 (cross-examination testimony of Mr. Gorman) (confirming the Utility has not proposed to increase customer rates to reflect claimed potentially increased costs).

[168] *See* TURN-EPUC-IS-01, at 11-12.

[169] *See* Mar. 3, 2020 Tr. at 1097:4-1098:10 (cross-examination testimony of Mr. Kenney).

(b) PG&E's Plan Will Reduce Rates.

As described above, PG&E's Plan creates $1.4 billion in nominal interest cost savings, which will be realized over time. These savings result from the refinancing of certain high-coupon prepetition debt as part of the Noteholder RSA, which could not have been accomplished outside the bankruptcy process.[170] Depending on the discount rate and duration of savings used, the net present value of such savings ranges from approximately $1 billion to $683 million.[171] Although certain intervenors presented calculations showing lower interest cost savings, those calculations are flawed, and regardless, the parties broadly agree with the bottom line that PG&E's Plan creates substantial interest cost savings.

[170] *See* PG&E-01, at 2-18–2-19 (opening testimony of Mr. Wells). During the evidentiary hearings, several parties acknowledged that the refinancing accomplished as part of the Noteholder RSA was an opportunity created by the bankruptcy proceeding. *See, e.g.*, Mar. 4, 2020 Tr. at 1286:5-16 (cross-examination testimony of Mr. Beach) (in response to question suggesting PG&E could not have done the refinancing absent the bankruptcy, Mr. Beach responded: "Yes. I'll agree that that was the result of the bankruptcy."); *id.* at 1335:13-26 (cross-examination testimony of Mr. Gorman) ("I acknowledge that there may have been interest rate savings associated with high coupon debt that you were able to refinance down to market levels that you may not have been able to economically refinance absent the bankruptcy.").

[171] *See* PG&E-15. The 4.75% discount rate used by PG&E reflects the average coupon of the debt, or the risk adjusted cost of secured debt capital for the Utility. Certain intervenors asserted that a more appropriate discount rate from the perspective of customers is the Utility's weighted average cost of capital, 7.81%. *See* CLECA-01, at 17:18-18:1; TURN-EPUC-IS-01, at 9, n.27.

	PG&E	TURN-EPUC-IS	CLECA	CCSF	Beach
NPV Interest Cost Savings	**$683M-$943M**[172]	**$700M**[173]	**$694M**[174]	**$450M-$600M**[175]	**$415M-$796M**[176]

The interest cost savings created by PG&E's Plan will translate to rate reductions in the Cost of Capital update following PG&E's emergence from bankruptcy.[177] Based on the Noteholder RSA and anticipated interest rates for the new debt to be issued at emergence under PG&E's Plan, the Utility anticipates that its post-emergence cost of debt will be significantly lower than the current 5.16% authorized by the Commission in the Cost of Capital Decision.

Customers will experience a net rate reduction under PG&E's Plan because the interest cost savings exceed the bankruptcy-related costs that PG&E seeks to recover. Many parties implicitly or explicitly acknowledged that the Plan is "neutral, on average" under these circumstances.[178]

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[172] PG&E-15.

[173] TURN-EPUC-IS-01, at 9, n.27.

[174] CLECA-01, at 17:18-18:1.

[175] CCSF-01, at 27:1-3. CCSF's calculation assumes the Utility's debt would not be refinanced as prepetition bonds matured, which is not a reasonable assumption, as acknowledged by CCSF's witness during the evidentiary hearing. *See* Mar. 3, 2020 Tr. at 1210:15-1211:2 (cross-examination testimony of Ms. Meal). CCSF also used a 16% discount rate for the lower end of their range (*see* CCSF-01, Attachment P, at 2), with no explanation as to why such a discount rate would be appropriate.

[176] PG&E-X-07, at 1, 6 (JCCA Response to Q.2 and "Review of Debt Savings from PGE Plan.xls"). The Joint CCAs' calculation includes principal as well as interest (*see* Mar. 4, 2020 Tr. at 1306:9-12 (cross-examination testimony of Mr. Beach)), which is not appropriate for a calculation of interest cost savings.

[177] As contemplated by the 2020 Cost of Capital Decision, the Commission will decide in this proceeding the process by which PG&E will update its cost of debt following its emergence from bankruptcy. *See* D.19-12-056, at 46-47. The Utility's proposal with respect to that process is set forth in Part III.D.3, and the Utility requests that the Commission adopt that proposal in the decision in this proceeding.

[178] *See, e.g.*, Mar. 2, 2020 Tr. at 1025:1-1026:21 (cross-examination testimony of Ms. Yap) (confirming PG&E's Plan is "neutral, on average" so long as costs to be recovered do not exceed interest cost savings); SBUA-01, at 22-23 (reply testimony of Ted Howard) (asserting that savings should be used to pay bankruptcy costs to ensure "neutral" outcome); TURN-EPUC-IS-02, at 22 (evaluating "neutral, on average" in terms of whether interest cost savings exceed bankruptcy-related costs). Although a few intervenors argued that the Utility should not be able to recover bankruptcy-related costs even to the

PG&E presented an illustrative calculation showing estimated revenue requirement savings in 2021 of $192 million under PG&E's Plan.[179] The estimated $192 million of savings accounts for $150 million of financing-related fees that the Utility seeks to recover on an amortized basis, including: (1) the Noteholder RSA fees, and (2) issuance fees associated with the $5.925 billion of new debt to be issued under PG&E's Plan (excluding fees on the portion of the new debt that will fund the Utility's Wildfire Fund contribution).[180] Recovery of these fees is appropriate because the fees are less than the interest rate benefits and reasonable—the Noteholder RSA fees are necessary to achieve the interest rate benefits of the Noteholder RSA, and other fees PG&E seeks to recover are typical issuance fees recovered in the normal course, which intervenors acknowledged are recoverable.[181] The breakdown of the estimated revenue requirement savings resulting from the Utility's lower cost of debt post-emergence is as follows:[182]

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extent exceeded by the interest cost savings (*e.g.*, TURN-EPUC-IS-01, at 8 (reply testimony of Robert Finkelstein)), that argument is not consistent with the statutory "neutral, *on average*" requirement, and ignores that utilities typically recover reasonable financing fees as part of their authorized cost of debt.

[179] PG&E-11.

[180] The savings calculation does not account for "other" new issuance fees (~$4M) or hedging costs, if any. The total amount of financing-related fees that PG&E seeks to recover is currently estimated to be $154 million, which does not include interest rate hedging costs. *See* A.19-11-002. PG&E has not made a determination as to whether it will enter into hedging transactions, and if it does, whether or to what extent it would seek to recover any such future costs. PG&E has committed that it would not seek recovery of any costs that would exceed the net savings to customers from PG&E's Plan. *See* Feb. 28, 2020 Tr. at 679:23 - 680:6 (redirect examination testimony of Mr. Wells); Mar. 3, 2020 Tr. at 1094:1-1095:8 (cross-examination testimony of Mr. Kenney). PG&E anticipates that it would provide actual and final amounts of any hedging costs it seeks to recover as part of the Cost of Capital update process following emergence. The Commission would at that time review the reasonableness of such costs and ensure consistency with the "neutral, on average" requirement.

[181] *See* Mar. 4, 2020 Tr. at 1375:18-1376:18 (cross-examination testimony of Mr. Gorman) ("PG&E should recover reasonable and prudent costs which would include the reasonable and prudent costs of those refinanced high coupon debt instruments."). During the evidentiary hearing, Ms. Yap, on behalf of CLECA, confirmed that the Utility recovered its actual financing fees in connection with the prior bankruptcy proceeding. *See* Mar. 2, 2020 Tr. at 1017:22-28 (cross-examination testimony of Ms. Yap).

[182] PG&E-11.

Weighted Average Rate - Utility Debt[1]	4.09%
Pre-Petition Debt Amortizations[2]	0.15%
Underwriting Fees on $5.925B New Issue ($26M)[3]	0.02%
Noteholder RSA Fees ($106M)	0.04%
Utility Bridge Fees ($18M)[3]	0.01%
Other Issuance Fees on $5.925B New Issue[3,4]	TBD
Hedging Cost, if any[5]	TBD
[a] Post-Emergence Cost of Debt (estimated)	4.3%
[b] 2020 Authorized Cost of Debt	5.16%
2019 Authorized Cost of Debt	4.89%
RRQ Savings	
2021 Rate Base (Fcst, $ millions)[6]	$47,500
Authorized Debt Capitalization	47.50%
Authorized Cost of Debt Decrease[7]	-0.85%
2021 RRQ Savings ($ millions)[8]	**$ 192**

Notes
1.) Includes reinstated debt, RSA exchange debt, and $5.925B new issue debt
2.) Includes amortized upfronts on pre-petition debt (underwriting fees, etc)
3.) Excludes fees on the portion of new issuance to fund AB1054 wildfire fund contribution ($2.5 billion)
4.) Includes typical issuance costs (rating agency, CPUC, SEC, and legal fees), could be ~$4 million (<1 basis point impact)
5.) CPUC has not authorized hedging but may do so
6.) Source: PG&E Q4 2019 Business Update
7.) = [b] - [a]
8.) 2021 savings only, does not reflect savings in future years

The Utility proposes that these financing-related fees be amortized over the life of the debt as is typical, and consistent with the testimony of Catherine E. Yap on behalf of CLECA.[183]

PG&E has committed that it will not seek to recover any additional bankruptcy-related costs, including bankruptcy professional fees estimated to be just under $1.6 billion.[184] This clarification definitively resolves the concerns raised by various intervenors that PG&E's Plan

[183] *See* CLECA-01, at 19:4-6.

[184] *See* PG&E-08 at 1-2; Feb. 28, 2020 Tr. at 679:6-17 (redirect examination testimony of Mr. Wells) (providing PG&E's current estimate of bankruptcy-related fees the company is not seeking to recover).

might not be "neutral, on average" if the Utility were to seek recovery of the full range of bankruptcy-related costs.[185]

During the evidentiary hearing, intervenors broadly confirmed they have no reason to disagree with the Utility's estimated post-emergence cost of debt (~4.3%), or the revenue requirement savings that would result from an 85-basis-point reduction in the Utility's authorized cost of debt (~$192 million).[186] Certain intervenors suggested the Utility's current authorized cost of debt (5.16%) is not an appropriate baseline for the calculation of revenue requirement savings.[187] But nobody contested that cost of debt in the Cost of Capital proceeding,[188] and any attempt to do so now is an improper collateral attack on the 2020 Cost of Capital Decision.[189] In any event, PG&E's Plan also yields rate savings when compared to PG&E's prepetition authorized cost of debt (4.3% < 4.89%).[190] The Utility's estimated post-emergence cost of debt is lower than the cost of debt recently authorized for SCE (4.74%) and SDG&E (4.59%).[191] (As

[185] *See* CCSF-01, at 24:15-25:9 (asserting bankruptcy-related costs could total $1.8 billion based on PG&E's recent Form 8-K submission); CLECA-01, at 19:14-20:5 (same).

[186] *See, e.g.*, Mar. 2, 2020 Tr. at 1029:25-1030:5 (cross-examination testimony of Ms. Yap) (confirming no disagreement with PG&E's estimated post-emergence cost of debt); Mar. 3, 2020 Tr. at 1185:20-22 (cross-examination testimony of Ms. Meal) (confirming no disagreement with PG&E's evaluation of rates); Mar. 4, 2020 at 1287:1-1288:2 (cross-examination testimony of Mr. Beach) (confirming no reason to believe revenue requirement savings incorrect); *id.* at 1336:21-1337:2 (cross-examination testimony of Mr. Gorman) (confirming no reason to dispute PG&E's estimated post-emergence cost of debt). *See also* CLECA-02 (response to Q.3) (confirming calculation showing $192 million revenue requirement savings from .85% reduction in cost of debt is mathematically correct).

[187] *See* CLECA-02, at 1-2 (response to Q.2).

[188] *See* D.19-12-056, at 13.

[189] Pub. Util. Code § 1709.

[190] *See* Advice Letter 3887-G/5148-E, effective as of January 1, 2018, pursuant to D.17-07-005 (setting PG&E's authorized cost of debt at 4.89%).

[191] *See* D.19-12-056, at 13-14.

acknowledged by various parties, SCE and SDG&E are reasonable comparators for evaluating the Utility's cost of debt.[192])

The anticipated rate reductions that will result from the Utility's Cost of Capital update are the only direct rate impacts of PG&E's Plan. Accordingly, PG&E has met its burden of showing that its Plan is "neutral, on average" to customers.

2. The "Neutral, On Average" Standards Proposed By Intervenors Are Either Satisfied By PG&E's Plan Or Beyond The Scope Of Section 3292(B)(1)(D).

Witnesses on behalf of TURN, EPUC, IS, the Joint CCAs, and CCSF proposed various standards for the Commission to consider in determining whether PG&E's Plan is "neutral, on average" to customers. The premise underlying all of those proposals is that PG&E's Plan will create negative ratepayer impacts compared to a hypothetical baseline, which is contrary to fact and lacks evidentiary support in the substantial record established in this proceeding.

(a) The Plan Is Neutral Relative To A Baseline "Absent The Bankruptcy."

R. Thomas Beach, on behalf of the Joint CCAs, and Michael P. Gorman, on behalf of TURN, EPUC, and IS, recommend that the Commission develop a hypothetical—that is, "counterfactual"[193]—baseline of PG&E's cost of debt "absent the bankruptcy," to be compared to the Utility's cost of debt in future Cost of Capital proceedings.[194] As explained by Mr. Beach,

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[192] *See, e.g.*, Mar. 2, 2020 Tr. at 1035:21-1036:7 (cross-examination testimony of Ms. Yap) (confirming she would expect PG&E's and SCE's cost of debt to be "within the same ballpark, assuming that PG&E was not in bankruptcy"); Mar. 3, 2020 Tr. at 1185:6-12 (cross-examination testimony of Ms. Meal) (confirming she would expect PG&E's cost of debt absent bankruptcy to be comparable to that of SCE and SDG&E "[w]ithin a certain range of interest costs"); Mar. 4, 2020 Tr. at 1288:15-1289:3 (cross-examination testimony of Mr. Beach) (confirming he agrees the Commission should consider the cost of debt of other California utilities); *id.* at 1360:14-20 (cross-examination testimony of Mr. Gorman) (confirming he agrees SCE and SDG&E would be a factor in evaluating PG&E's cost of debt).

[193] *See* Mar. 4, 2020 Tr. at 1280:23-1281:10 (cross-examination testimony of Mr. Beach).

[194] *See* JCCA-01, at 25:24-26:3 ("[T]he Commission cannot make the necessary determination that the PG&E Plan is 'neutral, on average, to the ratepayers' unless it answers the question 'neutral, compared to what.' *The comparison that must be made is to what ratepayers would have paid without the*

PG&E's Plan should be deemed "neutral, on average" when the Utility can show that its actual cost of debt is lower than the hypothetical "absent the bankruptcy" baseline.[195]

Because PG&E's Plan does not increase rates, the development of a hypothetical baseline is not necessary or relevant.[196] Nonetheless, the evidence conclusively shows that the Plan will result in the Utility having a *lower* cost of debt than it would have had "absent the bankruptcy." The Utility's cost of debt is affected by its credit ratings, which were downgraded to sub-investment grade prior to the bankruptcy filing. In fact, the bankruptcy proceeding created financing opportunities that would not have been available to the Utility "absent the bankruptcy" and that result in a lower cost of debt relative to the hypothetical baseline. First, the Utility was able to obtain reasonable debtor-in-possession financing in January 2019 that was superior to any

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bankruptcy.") (emphasis added); Mar. 4, 2020 Tr. at 1279:21-1280:22 (cross-examination testimony of Mr. Beach). *See also* Mar. 4, 2020 Tr. at 1327:27-1328:9 (cross-examination testimony of Mr. Gorman) ("There would be increased cost associated with what the company's actual interest costs are, and then exiting bankruptcy *compared to what the interest rates would have been had it not filed for bankruptcy*.") (emphasis added).

[195] *See* Mar. 4, 2020 Tr. at 1291:7-27 (cross-examination testimony of Mr. Beach). Mr. Beach seemed to acknowledge during the evidentiary hearing that the Commission could make the "neutral, on average" determination based on emergence. *See id.* at 1292:27-1293:15:

> Q. []My question is if PG&E's costs were below the baseline on exit, would that mean that your recommendation would not apply?
>
> [objection and ruling omitted]
>
> A. I think that would be -- that would be for the Commission to determine if the rate neutrality on average condition of AB-1054 had been satisfied.

Mr. Beach later seemed to contradict himself, saying "we're not just going to take one snapshot as of the moment PG&E emerges from its plan and decide it's ratepayer neutral." *Id.* at 1314:5-23.

[196] Mr. Beach erroneously suggests that PG&E's witnesses agree his hypothetical baseline proposal is necessary. *See* Mar. 4, 2020 Tr. at 1304:14-27 (cross-examination testimony of Mr. Beach). While PG&E's testimony acknowledges the "neutral, on average" requirement contemplates a comparison of rates under the Plan to rates that would exist in the absence of the Plan, that evaluation should focus on the rate impacts created by PG&E's Plan. Because PG&E's Plan does not increase rates and, in fact, creates rate reductions, there is no need for the Commission to develop a complicated and speculative hypothetical baseline, including hypothetical credit ratings, in a world "absent the bankruptcy." As described above, the Utility will emerge from bankruptcy financially healthy, in a much stronger position than January 2019, and with a clear path to further improving its financial standing over time.

financing the Utility could have obtained in the market at that time based on its credit rating.[197] Second, as described above, the Utility was able to lower its long-term cost of debt by refinancing certain prepetition debt as part of the Noteholder RSA, which it could not have done outside the bankruptcy context.

Under Mr. Beach's own analysis, PG&E's Plan's is "neutral, on average" based on the Utility's estimated post-emergence cost of debt. Mr. Beach testified:

> Well, you can certainly look at what PG&E paid before the bankruptcy. You can look at what other California utilities' cost of capital is. Utilities that face the same regulatory and statutory structures as PG&E and operate in the same state with similar wildfire risks.[198]

It is undisputed that the Utility's estimated post-emergence cost of debt (~4.3%) is lower than its prepetition authorized cost of debt (4.89%)[199] and the current authorized cost of debt for SCE (4.74%) and SDG&E (4.59%),[200] neither of which has declared bankruptcy. Accordingly, PG&E's Plan fully satisfies the "neutral, on average" requirement.

Relatedly, the short-term borrowing and collateral costs identified by Mr. Gorman[201] and Margaret A. Meal, on behalf of CCSF,[202] are not incremental costs due to the bankruptcy. Months before the Chapter 11 filing, the Utility sought authorization from the Commission to

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[197] *See* 1340:10-1341:6 (cross-examination testimony of Mr. Gorman) (describing "[t]he debtor in possession financing and senior loan rate, which may have given it a more favorable interest rate than what PG&E could have issued on a non-secured basis at that time"). *See also* 11 U.S.C. § 364(c).

[198] Mar. 4, 2020 Tr. at 1280:23-1281:10 (cross-examination testimony of Mr. Beach).

[199] *See* Advice Letter 3887-G/5148-E, effective as of January 1, 2018, pursuant to D.17-07-005.

[200] *See* D.19-12-056, at 13-14.

[201] *See* TURN-EPUC-IS-02, at 21:29-35, 22:6-11 (describing purported increases in short term borrowing cost and collateral requirements due to the bankruptcy).

[202] *See* CCSF-01, at 22:6-23:2; TURN-EPUC-IS-02, at 21:29-35, 22:6-11 (describing purported increases in short term borrowing cost and collateral requirements due to the bankruptcy).

issue an additional $2 billion of debt for short-term borrowing and collateral costs.[203] Rating agencies downgraded the Utility below investment grade in early January 2019, prior to and separate from PG&E's filing for Chapter 11 bankruptcy.[204] The Utility's higher collateral posting requirements arose from the fact that its credit ratings fell, not from the fact of the Chapter 11 filing.[205]

(b) The Commission Should Not Adopt A Hypothetical Baseline That Arbitrarily Excludes Certain Prepetition Events.

Perhaps recognizing that PG&E's Plan easily satisfies the "absent the bankruptcy" baseline at emergence, Mr. Beach and Mr. Gorman add various modifications to their proposed baselines to reflect the Utility's cost of debt in hypothetical worlds that exclude not only the Chapter 11 filing, but also selected prepetition events that unquestionably occurred "absent the bankruptcy." These proposals are arbitrary, are not reasonable interpretations of the statute, and cannot be reasonably implemented.

Arbitrary. For example, Mr. Beach proposes to use as the starting point for his counterfactual baseline, not the time period immediately preceding the Utility's Chapter 11 filing, but PG&E's average cost of capital during the 24-month period between November 2016 and October 2018, with adjustments to reflect the hypothetical debt and equity the Utility would have raised in a world without the Camp Fire or the Chapter 11 filing.[206] Although Mr. Beach

[203] *See* PG&E-X-06 (PG&E's Amendment to Application for Authority to Issue Up to $6,000,000,000 to Finance Its Short-Term Borrowing Needs and Procurement-Related Collateral Costs, dated November 21, 2018). Moreover, Mr. Gorman's concern regarding interest expense for short-term borrowing is misplaced because, as clarified by counsel during the hearing, the actual interest rate on the Utility's short-term debt is generally not passed through to customers. *See* Mar. 2, 2020 Tr. at 800:13-801:21 (clarification through statement of counsel on behalf of PG&E).

[204] CCSF-01, Attachment L (Jan. 12, 2019 Moody's Investors Service Credit Opinion re PG&E).

[205] *See* PG&E-08, at 4 and n.12 (citing PG&E 10-K (2019), at 77 ("As a result of PG&E Corporation's and the Utility's credit ratings ceasing to be rated at investment grade, the Utility has been required to post collateral under its commodity purchase agreements and certain other obligations.")).

[206] PG&E-X-07, at 3 (JCCA response to Question 8).

admitted that any borrowings of the Utility "absent the bankruptcy" actually would have reflected its sub-investment grade credit rating as of January 10, 2019,[207] he excludes that credit rating downgrade from his baseline.[208] He also excludes the Camp Fire in 2018, but not the 2017 wildfires, based on his assumption that the Camp Fire was the "precipitating factor" to the bankruptcy.[209] And although Mr. Beach includes the 2017 wildfires in his baseline, he acknowledged that his use of a 24-month average between November 2016 and October 2018 results in a failure to fully recognize the impact of those fires.[210]

Mr. Gorman stretches even further with his proposed baseline, excluding all of the 2017 and 2018 wildfires and the subsequent credit rating downgrades that occurred (not just to PG&E, but also to SCE and SDG&E) in 2018 and 2019, prior to PG&E's Chapter 11 filing.[211] Remarkably, Mr. Gorman suggested in his reply testimony that the Utility post-emergence should be compared to a baseline credit rating of A-, a credit rating which PG&E has not had since February 2018,[212] and which neither SCE nor SDG&E currently has.

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[207] Mar. 4, 2020 Tr. at 1297:24-1298:8 (cross-examination testimony of Mr. Beach). Mr. Gorman also acknowledged that any debt issued by PG&E as of early January 2019 would have reflected its sub-investment grade credit rating. *See* Mar. 4, 2020 Tr. at 1340:10-21 (cross-examination testimony of Mr. Gorman).

[208] PG&E-X-07, at 3-4 (JCCA response to Q.8).

[209] *See* Mar. 4, 2020 Tr. at 1296:5-1297:23 (cross-examination testimony of Mr. Beach) ("It seemed to me that sort of the precipitating factor in PG&E's bankruptcy was the Camp Fire so that I chose the two years prior to that incident.").

[210] *See* Mar. 4, 2020 Tr. at 1298:14-1299:8 (cross-examination testimony of Mr. Beach) (admitting a one-year period after the 2017 wildfires would better reflect the effect of the 2017 wildfires).

[211] *See* Mar. 4, 2020 Tr. at 1330:2-18; 1367:22-1368:19 (cross-examination testimony of Mr. Gorman); EPUC-01, at 3 (response to Q.3). Mr. Gorman admitted that "PG&E's bond rating eroded significantly before it actually filed for bankruptcy. So I would say that probably through most of 2018, its bond rating was downgraded before Southern Cal or San Diego's." *Id.* at 1339:1-20 (cross-examination testimony of Mr. Gorman). *See also* PG&E-X-03; CCSF-01, Attachment L (Jan. 2019 credit opinion re PG&E downgrade).

[212] *See* TURN-EPUC-IS-02, at 21-22 (using A- credit rating as baseline for evaluating claimed higher interest expense); EPUC-01, at 5 (response to Q.5), and Attachment 3 (using A- credit rating as baseline; showing PG&E credit rating history).

Those proposals go well beyond the statutory "neutral, on average" requirement, which is explicitly limited to "the reorganization plan and other documents resolving the bankruptcy proceeding." The Commission should not adopt recommendations that ignore the plain language of the statute and attempt to sweep in all manner of potential second-order effects from events that occurred prior to the Chapter 11 filing.

Not Based on Statute. During Mr. Gorman's cross-examination at the evidentiary hearing, it became clear that his proposal is not based on the "neutral, on average" requirement established by AB 1054 at all. Instead, Mr. Gorman proposes to isolate and disallow any costs of debt that he deems the "result of imprudent management" for all investor-owned utilities regardless of whether they declared bankruptcy or not.[213] Mr. Gorman claims that imprudent costs include not just unreasonable financing costs, but second-order effects such as higher financing costs caused by credit rating downgrades potentially attributable to imprudence on the part of the Utility. As was clear from his testimony during the hearing, Mr. Gorman proposes this not because it is required for "neutral, on average," but based on his own interpretation of general ratemaking principles.[214] Although PG&E disagrees with his interpretation of ratemaking principles,[215] not even Mr. Gorman argues that the second-order effects he posits

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[213] *See* Mar. 4, 2020 Tr. at 1368:20-1369:6 (cross-examination testimony of Mr. Gorman):

> Q. My question is would you recommend that the Commission apply the same methodology to evaluate Edison's cost of debt?
>
> A. I think in every rate proceeding the Commission should only include prudent and reasonable cost in the development of the utility's revenue requirement in designing rates for retail customers.
>
> So, to the extent any utility's costs include costs that are the result of imprudent management or costs that are unreasonable, I think they should be eliminated from the utility's revenue requirement.

[214] Notably, Mr. Gorman never used the terms "neutral" or "neutral, on average" during his testimony at the evidentiary hearing.

[215] PG&E does not disagree that the Utility's financing costs need to be just and reasonable, but disagrees with Mr. Gorman's position that the Commission's evaluation of the Utility's cost of debt should include second-order effects potentially attributable to any past imprudence on the part of the Utility. Mr.

result from PG&E's Plan. Thus, the Commission should not consider his position in determining whether PG&E's Plan is "neutral, on average" pursuant to Section 3292(b)(1)(D).

Impracticable. The hypothetical baselines proposed by Mr. Beach and Mr. Gorman also would be nearly impossible for the Commission to implement. That Mr. Beach and Mr. Gorman do not even agree on the relevant hypothetical baseline illustrates that their proposals cannot be reasonably or objectively implemented.

The development of a hypothetical baseline would be "highly speculative,"[216] and Mr. Beach and Mr. Gorman have not even proposed a specific methodology for the Commission to apply.[217] Mr. Gorman admitted that "had those [PG&E] wildfire events not occurred, then I can't say what would have happened to all the utilities' bond ratings in California."[218] And when asked whether he thinks PG&E would have filed for bankruptcy had the Camp Fire occurred, but

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Gorman appears to be proposing a fundamental change in how the cost of debt is set by the Commission in Cost of Capital proceedings such that the Commission would need to conduct prudence reviews regarding historical wildfires and other events even if the utilities never seek to recover from customers the costs associated with such events. *See* Mar. 4, 2020 Tr. at 1369:7-13 (cross-examination testimony of Mr. Gorman) (affirming he might propose adjustment if cost of debt impacted by fire claims costs that may have resulted from imprudence). To the extent Mr. Gorman proposes this change in future Cost of Capital proceedings, it should not be adopted.

[216] Mar. 3, 2020 Tr. at 1179:28-1180:14 (cross-examination testimony of Ms. Meal) ("The world in which PG&E had not declared bankruptcy I think is highly speculative. We don't really know what they would have done, absent the Chapter 11 filing."); *id.* at 1184:12-23("I don't think that hypothetical is solvable. We don't know what PG&E would have done absent this Chapter 11 filing."); *id.* at 1186:3-13("I don't know what PG&E would have done absent the Chapter 11 filing. And I would need to make a whole bunch of assumptions to – and speculate what they might have done in order to make that comparison.").

[217] *See* Mar. 4, 2020 Tr. at 1300:18-1301:13 (cross-examination testimony of Mr. Beach) ("Well, again, I think you're trying to read a mathematical formula into testimony that is not proposing a mathematical formula. I'm simply proposing the type of information that the Commission should look at in the cost of capital update proceeding in order to establish this baseline . . . The Commission considers such information as it sees fit."); *id.* at 1356:2-19 (cross-examination testimony of Mr. Gorman) ("I haven't reviewed this yet and I haven't discussed it with either TURN or EPUC or IS on what the appropriate method might be for establishing the cost of utility debt would be appropriate for including in the overall rate of return. I will be making that investigation."); *id.* at 1371:25-1372:10 (admitting he is not proposing a method by which the Commission would compare actual financing costs to hypothetical costs).

[218] Mar. 4, 2020 Tr. at 1354:9-1355:8 (cross-examination testimony of Mr. Gorman).

not the 2017 wildfires, Mr. Beach admitted, "[T]here's no way to answer that. That's not what happened."[219]

In addition, Mr. Beach and Mr. Gorman both acknowledged that there are numerous factors that impact a utility's credit rating and cost of debt—factors specific only to PG&E and factors applicable broadly to all California investor-owned utilities.[220] It is not clear how the Commission could separate out the potential impacts of the bankruptcy or individual wildfires from other state- or industry-wide factors to develop the proposed counterfactual baselines. And neither Mr. Beach nor Mr. Gorman presented any meaningful quantitative analysis of their proposed baselines.[221] Accordingly, the endeavor that they propose would necessarily be uncertain and unpredictable, which could harm the Utility's ability to attract capital and negatively impact the perceived business risk with respect to all California investor-owned utilities.

The cost of debt is "based on actual, or embedded, costs."[222] PG&E is not aware of any instance in which the Commission has developed a cost of debt based on a counterfactual baseline that rewrites history such as Mr. Beach and Mr. Gorman propose here, and there is no justification to start now given the lower cost of debt and tangible benefits created by PG&E's Plan.

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[219] Mar. 4, 2020 Tr. at 1296:23-1297:5 (cross-examination testimony of Mr. Beach).

[220] *See* Mar. 4, 2020 Tr. at 1294:3-26 (cross-examination testimony of Mr. Beach) (acknowledging factors such as wildfire risk exposure and perception of the California regulatory environment contribute to higher financing costs); *id.* at 1352:28-1355:12 (cross-examination testimony of Mr. Gorman) (acknowledging factors).

[221] *See* PG&E-X-07, at 3-4 (confirming no "quantitative analysis with respect to PG&E's cost of capital absent the bankruptcy"); Mar. 4, 2020 Tr. at 1281:11-24 (cross-examination testimony of Mr. Beach) (confirming he has no quantitative opinion as to what the Utility's cost of capital would have been absent the bankruptcy); *id.* at 1357:8-27, 1371:25-1372:6 (cross-examination testimony of Mr. Gorman) (confirming he is not proposing any specific adjustment to the Utility's cost of debt).

[222] D.19-12-056, at 12-13.

(c) The Commission Should Not Weigh Unspecified Additional "Risk Exposure."

Ms. Meal recommends that the Commission consider "risk exposure" in determining whether PG&E's Plan is "neutral, on average." But her theory of increased "risk exposure" is not persuasive because she could not quantify the risk and did not offer any specific recommendation as to how the Commission should attempt to weigh the asserted "risk" against the quantifiable benefits of the interest cost savings created by PG&E's Plan (as well as the many other qualitative benefits of the Plan described herein, such as expeditious resolution of prepetition liabilities, compensation to wildfire victims, and restoration of the Utility's financial health).[223]

Moreover, the increased "risk" is not as significant as Ms. Meal posits because, as described above, $2.5 billion of the debt on emergence reflects the Utility's contribution to the Wildfire Fund, a commitment required of all the investor-owned utilities; and the $6 billion Temporary Utility debt is counterbalanced by the shareholder NOL asset.[224]

3. PG&E's Plan Does Not Require Any Contributions From Customers.

For the Utility to be eligible to participate in the Wildfire Fund, the Commission must also "determine[] that the reorganization plan and other documents resolving the insolvency proceeding recognize the contributions of ratepayers, if any, and compensate them accordingly

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[223] Mar. 3, 2020 Tr. at 1217:15-1217:23 (cross-examination testimony of Ms. Meal):

> Q. Have you quantified the rate impact to customers of this risk exposure?
>
> A. Only as far as to say that if risks increase, costs increase, but I have done no further quantification than that.
>
> Q. So how should the Commission evaluate this unquantified risk relative to the interest cost savings?
>
> A. It's challenging.

[224] Ms. Meal's comments regarding a potential decline in "service levels" should be summarily dismissed given she "didn't evaluate service levels in either direction" and has no opinion on this topic. *See* Mar. 3, 2020 Tr. at 1216:15-24.

through mechanisms approved by the commission, which may include sharing of value appreciation."[225]

PG&E has not asked customers to contribute to its Plan via increased rates or otherwise. Wildfire claims will be funded by shareholders and, as described above, PG&E has used the bankruptcy process to create savings to the benefit of customers and other stakeholders.

Intervenors argue a few alleged "contributions" under the statute, but those positions are misguided. First, TURN argues that the $2.2 billion of insurance proceeds that are among the funding sources associated with PG&E's Plan reflect customer contributions.[226] TURN's interpretation is legally erroneous and should not be adopted. The insurance proceeds are funds obtained from insurance companies, not customers. Customer payment of the Utility's insurance premiums does not constitute "contributions" under the statute, which is limited to contributions specific to "the reorganization plan and other documents resolving the bankruptcy proceeding." This provision does not require the Utility to compensate customers for their contributions to the Utility's operating costs and capital expenditures in the normal course.

The Commission has long held that reasonable insurance premium costs are recoverable in the normal course as a core cost of doing business, independent of PG&E's Plan. For example, in declining to adopt TURN's proposal in SCE's Z-factor proceeding that shareholders should split with ratepayers the cost of wildfire insurance premiums, the Commission confirmed that "[l]iability insurance for the company is typically recognized as an accepted cost of doing business and is not split between shareholders and ratepayers."[227] Customers receive benefits from a utility's insurance coverage, including risk mitigation during covered periods and

[225] Pub. Util. Code § 3292(b)(1)(E).

[226] TURN-EPUC-IS-01, at 13-15.

[227] Resolution E-4994, at 10.

protection from cost recovery for any amounts covered under insurance policies, and insurance proceeds are ultimately recovered by the company to satisfy liabilities. Such proceeds are not allocated to customers in the normal course, and should not be allocated to customers here.

Indeed, there is no precedent for customers being "compensated" for insurance proceeds recovered by a utility. Mr. Gorman, TURN's witness in this proceeding, admitted that "ratepayers do not receive refunds of insurance proceeds" in the normal course.[228] Even where the Commission has found imprudence, such as in SDG&E's WEMA proceeding, no party argued that customers should be reimbursed for insurance proceeds used by the utility to satisfy claims related to the October 2007 wildfires. Nor should such arguments be countenanced here, as the uncertainty created by such an outcome would undermine the fundamental risk mitigation benefit of liability insurance. Insurance proceeds do not constitute customer contributions to PG&E's Plan within the meaning of AB 1054.

Second, the potential ratepayer "risks" of securitization described by certain intervenors[229] do not constitute customer contributions subject to compensation because PG&E's Plan does not include securitization. The Utility's proposed post-emergence securitization financing will be the subject of a separate application. In any event, the proposed securitization *will* recognize customer "contributions" because the Utility proposes to offset the securitization charges with bill credits such that the securitization is rate-neutral on average—even though this approach is not required by AB 1054 because securitization is not part of PG&E's Plan.

C. Fines And Penalties (Scoping Memo § 4.2)

PG&E has fairly and expeditiously resolved Commission proceedings regarding fines and penalties in a manner that will permit PG&E to emerge from Chapter 11. PG&E's Plan

[228] *See* EPUC-01, at 20 (response to Q.19b).

[229] *See* A4NR-02, at 10-13; CCSF-01, at 17:23-18:6.

identifies "CPUC Approval" as a condition precedent to the Effective Date of PG&E's Plan.[230] The Plan's definition of CPUC Approval includes "satisfactory resolution of claims for monetary fines or penalties under the California Public Utilities Code (Pub. Util. Code) for prepetition conduct."[231] Accordingly, Section 4.2 of the Scoping Memo identified as an issue whether the proposed plan of reorganization provides satisfactory resolution of claims for monetary fines or penalties for PG&E's prepetition conduct.[232] Such claims are encompassed within several other Commission proceedings: the Disconnection OII (I.18-07-008), the Ex Parte OII (I.15-11-015), the Locate and Mark OII (I.18-12-007), and the Wildfire OII (I.19-06-015).[233] PG&E has entered into settlement agreements resolving each of the above-referenced proceedings.[234]

The Commission has already approved three of the settlement agreements, finding that they fairly and reasonably resolve the claims at issue. Specifically, in the Disconnection OII, the Commission adopted a settlement agreement between PG&E and the Commission's Consumer Protection and Enforcement Division, which provided a bill credit to affected customers and a contribution to the Relief for Energy Assistance through Community Help Program.[235] In the Ex Parte OII, the Commission adopted settlement agreements between PG&E, the City of San Bruno, the City of San Carlos, the Public Advocates Office at the California Public Utilities Commission, the Commission's Safety and Enforcement Division ("SED"), and TURN, which provided for $107.5 million in financial penalties and forbearances, as well as non-financial

[230] PG&E's Plan § 9.2(m) [3/9 Plan § 9.2(*l*)]. Other aspects of the CPUC Approval provision are also conditions precedent to Plan Confirmation, but the "satisfactory resolution" of claims for monetary fines or penalties is not such a condition. *Id.* § 9.1(c).

[231] *Id.* § 1.37(c) [3/9 Plan § 1.38(c)].

[232] Scoping Memo at 6.

[233] PG&E-01 at 11-2 (opening testimony of Mr. Kenney).

[234] *Id.*

[235] *Id.* at 11-5; D.19-09-037.

remedies.[236] In the Locate and Mark OII, the Commission approved as modified a settlement agreement between PG&E, SED, and CUE, which provided for a total financial penalty of $110 million.[237] The approval of these settlements by the Commission constitutes a satisfactory resolution of the claims at issue in those proceedings within the meaning of the CPUC Approval provision of PG&E's Plan.

In the Wildfire OII, PG&E reached a settlement agreement with SED, CUE, and the Office of the Safety Advocate.[238] Under the settlement, in resolution of the potential claims, PG&E agreed not to seek rate recovery of $1.625 billion in wildfire-related expenditures and agreed to spend $50 million in shareholder-provided settlement funds on specified System Enhancement Initiatives relating to the company's electric transmission and distribution system.[239] On February 27, 2020, Administrative Law Judge Park issued a Presiding Officer's Decision approving the settlement if modified.[240] The proposed modifications would increase the total financial penalty from $1.675 billion to $2.137 billion, and in addition would require any tax savings associated with the shareholder payments under the settlement agreement to be used for the benefit of customers.[241] At this time, PG&E is continuing to evaluate the Presiding Officer's Decision and PG&E's possible response.[242]

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[236] PG&E-01 at 11-4 – 11-5 (opening testimony of Mr. Kenney); D.18-04-014; D.19-12-013.

[237] D.20-02-036.

[238] PG&E-01 at 11-2 – 11-3 (opening testimony of Mr. Kenney); I.19-06-015, *Joint Motion of Pacific Gas and Electric Company (U 39 E), the Safety and Enforcement Division of the California Public Utilities Commission, Coalition of California Utility Employees, and the Office of the Safety Advocate for Approval of Settlement Agreement*, filed December 17, 2019.

[239] PG&E-01 at 11-3 (opening testimony of Mr. Kenney).

[240] I.19-06-015, *Presiding Officer's Decision Approving Proposed Settlement Agreement with Modifications*, filed Feb. 27, 2020.

[241] *Id.* at 2.

[242] Feb. 28, 2020 Tr. at 585 (cross-examination testimony of Mr. Wells).

The Commission need not address the final resolution of the Wildfire OII settlement in order to determine in this proceeding that PG&E's Plan meets the requirements of AB 1054. Under PG&E's Plan, the Wildfire OII does not need to reach a satisfactory resolution before the Bankruptcy Court may issue an order confirming the Plan.[243] However, satisfactory resolution of the disputed issues surrounding the Wildfire OII settlement remains a condition precedent to the Effective Date of the Plan.[244] Once that proceeding is resolved, the result, and any impact on PG&E's Plan, will be addressed in the Plan prior to the Effective Date. PG&E remains optimistic that it will reach a satisfactory resolution of the Wildfire OII that will allow PG&E's emergence from Chapter 11.

D. Other Financial Issues (Scoping Memo § 4.7)

1. The Commission Should Not Develop An Earnings Adjustment Mechanism At This Time. (ACR § 8)

ACR § 8 proposes:

> "The Commission should consider establishing a mechanism to adjust PG&E's earnings (revenue requirement) based on its achievement of a relevant and reasonably achievable subset of the Safety and Operational Metrics, on a sliding scale of 4 percent up or 4 percent down of earnings in a given year. If adopted, the earning adjustment mechanism should be evaluated after a period of time. Development of the relevant subset of Safety and Operational Metrics and implementation of this earnings adjustment mechanism may occur after June 30, 2020."[245]

The Commission should not embark on development of a safety-oriented Earnings Adjustment Mechanism ("EAM") at this time, because PG&E in this proceeding is already introducing a robust new executive incentive compensation structure designed to incentivize the same results.[246] PG&E's testimony and exhibits set forth an executive compensation proposal in

[243] PG&E's Plan § 9.1(c).

[244] *Id.* at § 9.2(*l*).

[245] ACR § 8, App'x A at 8.

[246] *See* Part IV.C.

which a majority of executive compensation will be at risk based on achievement of performant metrics. Those metrics are heavily weighted toward customer and workforce welfare, and within that category, primarily wildfire safety and other public and employee safety metrics. This proposed compensation structure is a more direct way to provide a structural incentive toward safety objectives than an EAM, and it does not create the same capital markets risks and regulatory difficulties of an EAM. Indeed, AB 1054 itself adopts executive compensation as the preferred approach to linking financing incentives to safety. At a minimum, the Commission should evaluate the implementation and efficacy of PG&E's substantially revised executive compensation structure post-emergence before implementing a safety-oriented EAM that will require substantial attention and may have unintended negative consequences.

Because there has been limited experience in the utility sector with safety-oriented EAMs, development of the proposed EAM would pose novel challenges and require substantial regulatory resources. To the extent that other jurisdictions have implemented EAMs, they generally have used discrete, familiar and well-specified metrics that can be readily quantified.[247] By contrast, there is a dearth of experience with EAMs tied to wildfire safety efforts—making the design of a desirable safety-oriented EAM for PG&E particularly complex. This means that EAM practices and analytic approaches used in other jurisdictions cannot readily be applied to the unique circumstances of PG&E and California's wildfire safety focus.

As a result, the Commission would face a difficult task in determining the appropriate metrics to incorporate into an EAM, the relative weight and scale of measurement for each

[247] *See* Synapse Energy Economics, Inc., *Utility Performance Incentive Mechanisms – A Handbook* (March 9, 2015; prepared for Western Interstate Energy Board), *available at* https://www.synapse-energy.com/sites/default/files/Utility%20Performance%20Incentive%20Mechanisms%2014-098_0.pdf, at Section 3.3 (p. 19) ("Defining a metric typically involves," inter alia, "[s]pecific data definitions" and a "precise formula used to quantify each metric"); *see also id.* at App'x B at 96–99; *see especially id.* at 97 (listing relevant public safety metrics: number and kind of incidents, injuries, and fatalities per year; emergency response time; gas leak repair performance).

metric in the EAM formula, and the appropriate time horizons for measurement and application of the earnings adjustment. Design complexities would be exacerbated because many wildfire safety metrics and standards are new, so their relative efficacy in achieving the desired outcome—i.e., mitigating wildfires—has not yet been fully monitored or reviewed. Accordingly, substantial management and Commission resources and time would be required to design and implement an appropriate audit of the EAM factors, and to evaluate the overall efficacy of the EAM.[248]

In addition, an EAM would inherently involve misaligned incentives, and the potential for unintended negative consequences. Even carefully thought out metrics could incentivize misplaced management focus. An EAM likely would utilize only a relatively small subset of the total number of safety metrics that a utility might evaluate. By incentivizing company focus on those selected metrics, the EAM could implicitly incentivize reduced attention on other important areas that are not part of the EAM metrics.[249] A safety-oriented EAM also likely would misalign outcomes in that when safety objectives were not being met it would reduce the resources available to the utility, at precisely the time when additional resources for safety expenditures likely are needed. It also inherently misaligns customer and safety objectives in

[248] By way of example, the development of performance-based ratemaking in the UK was associated with a doubling of the number of full-time employees at the British Office of Gas and Electricity Markets over a five-year period. *Utility Performance Incentive Mechanisms* at 79 n.30. In Hawaii, a current investigation of performance-based ratemaking began in April 2018 and is expected to require 32 months. *See* Hawaii Public Utilities Commission, "Convening Phase 2 and Establishing a Procedural Schedule," Order 36388, Docket No 2018-0089, June 2019. In New York, a proceeding to incorporate EAMs likewise took 2 years. *See* Gavin Bade, *New York PSC enacts new revenue models for utilities in REV proceeding*, Utility Dive (May 20, 2016), *available at* https://www.utilitydive.com/news/new-york-psc-enacts-new-revenue-models-for-utilities-in-rev-proceeding/419596/ (describing process that began in 2014).

[249] *See Utility Performance Incentive Mechanisms* at 54 ("A common effect of establishing an incentive for one aspect of utility performance is to shift management's attention to the areas with incentives, to the detriment of areas that do not have incentives. … Avoiding unintended consequences requires significant attention to the myriad incentives utilities face and the ways in which the performance target may influence other aspects of the utility's system.")

that less safety (an undesirable outcome) leads to lower rates (a customer-desired outcome), and vice versa.

Finally, developing a new EAM would increase uncertainty as to PG&E's future financial results. The ACR outlines a potential EAM at a high level, and as described above, there would be considerable complexity and innumerable questions about the design and specificity of a final mechanism. Although the ACR's EAM proposal has both an upside and a downside, the financial markets and credit rating agencies are very likely to focus exclusively on the potential downside results in evaluating risks surrounding PG&E. This uncertainty could have a detrimental impact on PG&E's credit rating and cost of capital, and particularly could influence rating agencies' assessment of the supportiveness of the regulatory environment. Such an effect would be particularly detrimental in the current context, as PG&E is about to embark on a historically large capital raise, will need capital post-emergence to fund wildfire safety and critical infrastructure investments, and is focused on fostering a path back to issuer investment grade credit ratings.[250] To the extent that the EAM risk depresses stock price, it may accordingly also reduce the value of the compensation paid to wildfire victims through the Victim Trust.

Accordingly, PG&E recommends that the Commission not pursue the EAM at this time.

2. The Commission Should Grant PG&E's Requested Financing Authorizations For The Utility And Confirm That Secured PG&E Corporation Debt Does Not Require Commission Approval.

In connection with the funding for PG&E's Plan described above, PG&E requests associated long-term and short-term debt authorizations in this proceeding. Specifically, "the Utility needs authorization from the Commission pursuant to, inter alia, Pub. Util. Code §§ 818, 823 and 851 to issue the contemplated long-term and short-term debt" and to "consummate the

[250] Appendix C: Declaration of Jason P. Wells submitted herewith ("Wells Decl."), ¶¶ 14-20.

exit financing and fund its Plan."[251] PG&E's request complies with the direction in Administrative Law Judge Allen's December 27, 2019 Ruling Modifying Schedule, which stated that, "[b]ased on the understanding that the long-term debt at issue is integral to the plan of reorganization being considered in this proceeding, complies with all other requirements for issuance of debt, and does not require a separate financing order, PG&E should request approval of the long-term debt in this proceeding."[252] PG&E also has included a request for post-emergence, short-term debt authorization since this "is equally critical to PG&E's exit financing and successful emergence from Chapter 11."[253]

PG&E's testimony describes four specific requested authorizations: "(1) to issue approximately $11.85 billion in long-term debt as contemplated by the Noteholder RSA and according to the terms described therein; (2) up to $11.925 billion in additional long-term debt to finance PG&E's Plan and subsequent exit from Chapter 11, (3) up to $6 billion in short-term debt authority for the Utility's working capital and short-term debt needs for exit from Chapter 11 and on-going working capital and short-term needs and contingencies after exit; and (4) authorization of up to $11.925 billion in short-term debt to temporarily finance PG&E's exit from Chapter 11 which would be refinanced with the long-term debt already described in (2) and/or in connection with PG&E's anticipated request for a securitization transaction."[254] As Mr. Wells made clear during the hearings, the two $11.925 billion short-term and long-term authorizations—requests (2) and (4)—are "not intended to be duplicative … so we wouldn't intend to have at the same time the same amount issued twice."[255]

[251] PG&E-01 at 2-25 (opening testimony of Mr. Wells).

[252] Dec. 27, 2019 Ruling at 4-5.

[253] PG&E-01 at 2-25 (opening testimony of Mr. Wells).

[254] PG&E-01 at 2-25 (opening testimony of Mr. Wells).

[255] Feb. 28, 2020 Tr. at 544:7-8, 13-15 (cross-examination testimony of Mr. Wells).

The specific instruments associated with each of these requests for which PG&E seeks authorization are described in PG&E-01 at 2-25 – 2-38 (with minor typographical corrections in PG&E-07 at 2-27 – 2-28), and reflected here as Appendix B. Accordingly, PG&E requests authority to issue the contemplated long-term and short-term debt instruments and enhancements pursuant to Sections 818 and 823 and to encumber utility property pursuant to Section 851 in connection with the same. Consistent with Section 817, PG&E has proposed the following uses for the long-term debt:[256]

TABLE 2.4: USES OF UP TO $23.775 BILLION IN UTILITY LONG-TERM DEBT

Prepetition Utility Debt (Noteholder RSA Debt)	**$11.85 billion**
Prepetition Short-Term Debt Exchanged for Long-Term Debt	$3.183 billion
Refinancing of Pollution Control Bonds	**$0.1 billion**
Refinancing of Debtor-In-Possession Facility	**$2 billion**
Contribution to Wildfire Fund	**$2.5 billion**
Fire Claims	**$6 billion**
Accrued Interest, Trade Claims & Other	**$1.325 billion**
Total	**$23.775 billion**

And, "[i]n connection with these proposed uses, PG&E also requests authorization pursuant to Pub. Util. Code § 823(d) to use a portion of the long-term debt requested herein to refund prepetition short-term debt (as reflected in Table 2.4) and, if applicable, to refund the additional $11.925 billion short-term debt request …" should PG&E use that authorization. For reference, PG&E has included the following exhibits in connection with the requested financing authorizations:[257]

- PG&E-02 (Exhibit 2.1): Financial Statement

[256] PG&E-01 at 2-17, 2-31 – 2-32 (opening testimony of Mr. Wells).

[257] *See* PG&E-02; PG&E-03; PG&E-04 at i – 2-Exh.2.9-1; PG&E-07 at 2-Exh.2.8-1 – 2-Exh.2.8-44.

- PG&E-02 (Exhibit 2.2): Description of Property
- PG&E-02 (Exhibit 2.3): Previous Debt Authorizations *(associated with requests (1) and (2))*
- PG&E-02 (Exhibit 2.4): Short-Term Debt In Excess Of § 823(c) *(associated with requests (3) and (4))*
- PG&E-02 (Exhibit 2.5): Noteholder RSA *(associated with request (1))*
- PG&E-03 (Exhibit 2.6): Noteholder RSA – Reference Medium-Term Senior Note Documents *(associated with request (1))*
- PG&E-04 (Exhibit 2.7): Noteholder RSA – Reference Long-Term Senior Note Documents *(associated with request (1))*
- PG&E-07 (Exhibit 2.8; replaces PG&E-04 Exhibit 2.8): Bridge Commitment Letter *(associated with request (4))*
- PG&E-04 (Exhibit 2.9): Fee Computation

In addition, there is a possibility that the $4.75 billion of PG&E Corporation debt contemplated as part of the exit financing could "be secured by a pledge of PG&E Corporation's holdings in stock of the Utility, which is a common financing structure for holding companies. PG&E does not believe that such a pledge by PG&E Corporation would require advance Commission approval."[258] Specifically, the mere act of pledging an ownership interest in a public utility as collateral for the debt of a parent holding company does not result in a change in control under Section 854(a). However, "PG&E recognizes that, depending on the circumstances, Commission approval pursuant to Public Utilities Code section 854 may be required in the event of an actual transfer of ownership, such as in the event of a default."[259] Similarly, since utility stock is not property of the utility that is "necessary or useful" in serving customers, Section 851 approval is not required for a pledge of such stock. Thus, for instance, in

[258] PG&E-10 at 2.

[259] PG&E-10 at 2.

the context of a stock swap agreement the Commission has held that "[Section] 851 applies to the transfer of 'property necessary or useful in the performance of [a utility's] duties to the public.' As all TNT assets necessary and useful to TNT's operations will remain with TNT, no transfer implicating PU Code § 851 has occurred."[260] Nevertheless, for the avoidance of doubt in connection with any such secured debt issuance by PG&E Corporation, PG&E requests that the Commission confirm that no approval is required in advance of a mere pledge of utility stock. In the alternative, PG&E requests that the Commission grant any authorizations it deems necessary in connection with such a transaction.

No party has objected to these requests or recommended against their approval. Accordingly, based on the undisputed record, the Commission should grant PG&E's financing requests and confirm that secured PG&E Corporation debt does not require advance Commission approval.

3. The Commission Should Adopt PG&E's Proposal For Updating Its Cost Of Debt.

As contemplated by the 2020 Cost of Capital Decision, the Commission will decide in this proceeding the process by which PG&E will update its cost of debt in the Cost of Capital proceeding following its emergence from bankruptcy.[261] In that regard, PG&E proposes to file within 30 days of the Effective Date of PG&E's Plan a Tier 2 advice letter, with the updated authorized cost of debt to take effect as of the Effective Date of PG&E's Plan so that customers receive the full benefit of the lower cost of debt.[262] The financing-related fees that the Utility

[260] D.98-06-011, 80 CPUC 2d 401, 1998 WL 1750077 (1998). Earlier decisions could be read to suggest that Section 851 approval is required for a pledge or sale of utility stock. *See* D.84172, 78 CPUC 157, 1975 WL 34380 (Mar. 4, 1975). *See also* D.97-11-004, 76 CPUC 2d 378, 1997 WL 780158 (Nov. 5, 1997). PG&E believes that D.98-06-011, as the most recent decision on point, controls.

[261] D.19-12-056, at 46-47.

[262] *See* PG&E-09, at 2-3 (response to Question 7) (describing PG&E's proposed Cost of Capital update process).

seeks to recover on an amortized basis as an offset to the interest cost savings created by PG&E's Plan are as follows and described in detail above:[263]

- Approximately $26 million in typical underwriting fees on new PG&E long-term debt (excluding any fees on the $6 billion of Temporary Utility debt or the debt used for PG&E's contributions to the Wildfire Fund);
- Approximately $4 million in other issuance costs (including typical issuance costs, such as rating agency, Commission, SEC, and legal fees (excluding any such fees on the $6 billion of Temporary Utility debt or the debt used for PG&E's contributions to the Wildfire Fund);
- Up to $106 million under the terms of the Noteholder RSA as necessary to achieve the interest rate cost savings for the benefit of customers;
- Approximately $18 million in fees on the Bridge Facility (excluding any fees on the $6 billion of Temporary Utility debt or the debt used for PG&E's contributions to the Wildfire Fund); and
- Any interest rate hedging costs associated with Utility debt that funds rate base (excluding any costs of interest rate hedging associated with the $6 billion of Temporary Utility debt or the debt used for PG&E's contributions to the Wildfire Fund).

The Noteholder RSA fees are necessary to achieve the significant interest rate benefits of the Noteholder RSA, and the other fees PG&E seeks to recover are typical issuance fees recovered in the normal course. The Utility requests that the Commission make a finding that, apart from any interest rate hedging costs (the reasonableness of which PG&E proposes to address in its Tier 2 advice letter, if consistent with the final decision in A.19-11-002), these financing costs are reasonable as estimated (~$154 million), subject to a true-up in the Tier 2 advice letter based on the actual fees incurred. The actual and final amount of these financing costs, together with any interest rate hedging costs, will be set forth in the Tier 2 advice letter.

[263] *See* PG&E-11.

The Utility proposes that these financing costs be amortized over the life of the debt as is typical, and consistent with the testimony of Ms. Yap on behalf of CLECA.[264]

The Commission also should authorize PG&E, to the extent necessary for cost recovery, to record these financing costs in the memorandum account authorized by the Commission in A.19-11-002. In that application, PG&E requested the establishment of a "Bankruptcy Financing Memorandum Account effective as of the filing date of this Application to record the costs of any interest rate hedges and to track other costs that PG&E may incur in connection with its exit financing."[265] PG&E included financing-related costs within the requested memorandum account for the avoidance of doubt because it could incur costs "with respect to PG&E's exit financing in advance of [a] final Commission decision[] … in I.19-09-016" and because "PG&E's exit financing may require that certain financing fees be incurred that are not directly related to specific debt securities ultimately funded as part of PG&E's consummated exit financing," such as the Bridge Facility.[266]

The Proposed Decision of ALJ DeAngelis (Rev. 1) in A.19-11-002, which was approved as an item on the Commission's consent agenda at its March 12, 2020 voting meeting, "authorize[s] a memorandum account to track PG&E's costs limited to executing hedging transactions" and makes that memorandum account "effective as of the date of the filing of the Application, consistent with past Commission decisions."[267] However, the Proposed Decision "leave[s] for a later Commission determination, such as in I.19-09-016, whether PG&E should

[264] *See* CLECA-01, at 19:4-6.

[265] A.19-11-002 at 17.

[266] *Id.* at 17-18, n. 13.

[267] A.19-11-002, Proposed Decision of ALJ DeAngelis (Rev. 1) at 15-16 (citing D.03-09-020 (authorizing a "bankruptcy finance hedging memorandum account"); D.19-01-019 at 10 (establishment of a memo account as of the application filing date); D.18-11-051 at 10 (same); D.18-06-029 at 18 (same).

be further authorized to record costs and fees incurred in connection with PG&E's total exit financing package into the memorandum account" established in A.19-11-002.[268]

Consistent with that direction, PG&E formally makes such a request here in this proceeding. In particular, some of PG&E's financing related fees may be incurred upon approval by the Bankruptcy Court of PG&E's motion for approval of financing commitment letters,[269] which could occur as early as March 16, 2020, while other fees may be incurred at a later date in connection with actual issuance of the exit financing and funding of PG&E's Plan. Accordingly, to the extent the Commission determines that recording such costs in a memorandum account is necessary for inclusion in any update to PG&E's authorized cost of debt, PG&E requests that the Commission's decision in this proceeding authorize PG&E to record the aforementioned financing-related costs in the memorandum account established in A.19-11-002, effective as of the date of this filing.

IV. NON-FINANCIAL ISSUES (Scoping Memo § 3)

A. PG&E's Board-Level Governance Structure (Scoping Memo § 3.1)

PG&E's Board-level governance structure includes: (1) a defined Board member selection process and skills matrix that seek independent and diverse Boards whose members possess a range of backgrounds, skills, and expertise in safety, utility operations, and other areas; (2) a well-defined committee structure with clearly assigned responsibilities for safety and other oversight; (3) active engagement by Board members in oversight of the companies' safety and

[268] *Id.* at 15.

[269] Second Amended Motion for Entry of Orders (I) Approving Terms of Debtors' Entry Into and Performance Under, Equity Backstop Commitment Letters, (II) Approving Terms of, and Debtors' Entry Into and Performance Under, Debt Financing Commitment Letters and (III) Authorizing Incurrence, Payment and Allowance of Related Fees and/or Premiums, Indemnities, Costs and Expenses As Administrative Expense Claims, U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF 6013.

other initiatives; and (4) adherence to Board-level best practices.[270] No party has submitted any testimony disputing PG&E's showing of what the elements of a good board governance structure are, or that PG&E satisfies those elements. Although a few parties have proposed incremental changes they believe would *improve* oversight of PG&E's operations, no party has offered any testimony disputing that PG&E's Board-level "governance structure [is] acceptable" within the meaning of AB 1054.[271]

PG&E summarizes below the evidence demonstrating that its Board-level governance satisfies the statute. As PG&E discusses, it also is prepared to adopt nearly all of the ACR's proposals for further strengthening the Boards' oversight of safety and other matters.

1. PG&E's Board-Level Governance Is Robust, Adheres To Recognized Best Practices, And Is Heavily Focused On Safety.

PG&E Corporation enjoys the highest rating for board-level governance from Institutional Shareholder Services Inc. ("ISS"), a leading provider of corporate governance research—much higher than the average rating of other utility companies.[272] That rating reflects the fact that PG&E's Board structure is well positioned to provide effective oversight as PG&E transforms itself and fulfills its mission of delivering clean energy to its customers reliably, affordably, and—above all—safely. Specifically:

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[270] *See* PG&E-01 at 4-4 – 4-10 (opening testimony of Ms. Brownell) (describing board-level best practices); PG&E-04 – PG&E-06 (exhibits to opening testimony of Ms. Brownell, including publications discussing best practices). As PG&E notes in its testimony, the governance structures and practices of the PG&E Corporation and Utility Boards are substantially similar, and their respective memberships are nearly identical. (*See* PG&E-01 at 4-3 n.1 (opening testimony of Ms. Brownell).) Accordingly, PG&E's discussion herein generally does not differentiate between the two Boards.

[271] Pub. Util. Code § 3292(b)(1)(C).

[272] *See* PG&E-01 at 4-22 (opening testimony of Ms. Brownell) (stating that PG&E Corporation has a rating of "1" (the most favorable rating on a sale of 1 to 10) for board structure, and that the average rating for 14 peer utility companies is 5.29). ISS does not assign ratings to the Utility because the Utility is not a publicly traded company.

Board Member Nomination Process. PG&E follows a robust director selection process. PG&E Corporation's Nominating and Governance Committee, which consists entirely of independent directors as defined in applicable New York Stock Exchange ("NYSE") rules, leads the process of vetting and nominating director candidates based on PG&E's director skills matrix.[273] PG&E's matrix, which the Committee and the Boards re-evaluate annually, seeks to achieve diverse and well-rounded Boards. PG&E has updated the director skills matrix, which includes consideration of characteristics such as "[u]tility operations"; "[w]ildfire safety, preparedness, prevention, mitigation, response, and/or recovery"; "[w]orkforce safety and/or public safety"; "[t]echnology and cybersecurity"; "[n]uclear generation safety"; "[n]atural gas transmission, distribution, operation, and safety"; "[r]isk management (including enterprise risk management)"; and "[i]nnovation and technology in the clean energy or utility industry," to name a few.[274] PG&E's director selection process accords with recognized best practices.[275]

[273] *See id.* at 4-10 – 4.11.

[274] *Id.* at 4-11 – 4-12; *see also* PG&E-05 at 4-Exh.3-16 (California Public Employees Retirement System ("CalPERS"), *Governance and Sustainability Principles* (Sept. 2019)) ("Board attributes should include a range of skills and experience which provide a diverse and dynamic team to oversee business strategy, risk mitigation and senior management performance."); PG&E-05 at 4-Exh.4-3 (California State Teachers' Retirement System ("CalSTRS"), *Corporate Governance Principles* (Nov. 2018)) ("The board should be composed of diverse individuals with the skills, education, experiences, expertise and personal qualities that are appropriate to the company's current and long-term business needs."); PG&E-05 at 4-Exh.5-2 (Vanguard, *Semiannual Engagement Update* (2019)) ("An effective board should … reflect … diversity of skill, experience, and opinion.").

[275] *See* PG&E-05 at 4-Exh.3-19 (CalPERS, *supra*) ("The main role and responsibilities of the nomination committee should … include[] … [d]eveloping a skills matrix, by preparing a description of the desired roles, experience and capabilities for each appointment, and then evaluating the composition of the board."); PG&E-06 at 4-Exh.8-17 (Deloitte, *2016 Board Practices Report: A Transparent Look at the Work of the Board* (10th ed. 2017)) (reporting that 61% of large cap companies surveyed "use a board skills matrix or similar tool"); National Association of Corporate Directors ("NACD"), *Board Evaluation: Improving Director Effectiveness*, at 8 (2010) ("[I]t is desirable to have an independent committee that is responsible for board excellence in both board composition and board operations. … [T]he nominating or governance committee is an ideal vehicle for this effort."); NACD, *Building the Strategic-Asset Board*, at 23 (2016) ("Nominating and governance committees should develop a 'cleansheet' assessment of the board's needs in terms of director skill sets and experience at least every two to three years, and use it as an input in continuous-improvement efforts … .").

Board Member Qualifications. PG&E's Board refreshment process in 2019 resulted in the departure of 80% of the then-current directors, and the addition of numerous new members who were well positioned to lead the companies through Chapter 11.[276] PG&E's current Boards include William D. Johnson (the new PG&E Corporation Chief Executive Officer ("CEO") and President who sits on both Boards) and Andrew M. Vesey (the new Utility CEO and President who sits on the Utility's Board), both of whom have dedicated their decades-long careers to safely delivering reliable and affordable energy to millions of customers.[277] PG&E's other Board members also collectively have substantial utility operating, safety, and other relevant experience, including in the areas of gas pipeline safety, electric transmission and distribution safety, electric generation safety, physical asset security, pipeline safety management systems, enterprise risk management, and safety culture.[278]

Two parties have made proposals for how they believe PG&E's Board composition can be improved, though the first proposal is unnecessary, and the second is both unnecessary and problematic. SBUA proposes that Board members be required to have experience with "vulnerable communities or small business customers," and it expressed concern that PG&E's director skills matrix lists only "large scale customer experience."[279] PG&E agrees that it should be attentive to the needs of all customers, including small businesses,[280] and that the Boards

[276] *See* PG&E-01 at 4-12 – 4-15 (opening testimony of Ms. Brownell).

[277] *See id.* at 4-13 – 4-14; *see also* PG&E-04 at 4-Exh.1-48 – 4-Exh.1-50 (Compliance Filing in Safety Culture OII).

[278] *See* PG&E-01 at 4-14 – 4-15 (opening testimony of Ms. Brownell); *see also* PG&E-04 at 4-Exh.1-1 – 4.Exh.1-64 (Compliance Filing in Safety Culture OII).

[279] SBUA-01 at 17 (reply testimony of Ted Howard).

[280] *See, e.g.*, Feb. 26, 2020 Tr. at 217 (cross-examination testimony of Mr. Johnson) (testifying that PG&E has had numerous discussions of operational risk management "in the context of PSPS events on small businesses and what we can do to make sure that small business knows that we appreciate them as customers"); Feb. 28, 2020 Tr. at 726 (cross-examination testimony of Ms. Brownell) ("If you want to talk about our commitment to the small business community, we've had a good relationship.").

should be well positioned to provide effective oversight in this regard. In fact, PG&E's current Board members, including the PG&E Corporation Chair Nora M. Brownell, collectively have extensive experience providing or overseeing utility and other services to small business customers.[281] Further, Ms. Brownell clarified on cross-examination that the matrix's reference to "large scale customer experience" refers not to experience with large customers, but, rather, to extensive experience with *all* kinds of customers.[282]

TURN proposes that "the PG&E Board(s) be composed of at least one-third of members with direct operational experience in the energy industry," and that "at least a majority of the Board members have safety experience in the energy industry or another industry (such as chemicals, manufacturing, or aviation, to name just a few) that provides potentially hazardous products or services."[283] In general, PG&E agrees that its Boards benefit from directors who have experience in these industries. But a "prescriptive" quota of directors[284] could prevent PG&E from installing the best possible Boards, given the need to balance a diversity of skills and expertise on the Boards in light of the pool of qualified candidates who are willing to serve. PG&E views this as an inherent problem with any proposal for inflexible quotas, and therefore urges rejection of such proposals in favor of a more flexible matrix that permits the Boards to consider the mix of relevant skills among candidates.

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[281] *See* PG&E-04 at 4-Exh.1-1 – 4.Exh.1-64 (Compliance Filing in Safety Culture OII) (describing Board members' experience providing or overseeing service to utility customers, among other kinds of experience); *see also* Feb. 28, 2020 Tr. at 727 (cross-examination testimony of Ms. Brownell) ("We have customers of all sizes. I was a small business lender. We were number one SBA lenders in our region for the ten years I was at the bank. I'm a small business owner. So I can appreciate the perspective of how important, and often neglected, the small business community is.").

[282] *See* Feb. 28, 2020 Tr. at 727 (cross-examination testimony of Ms. Brownell) ("By 'large-scale customer experience'—and we may have been inarticulate; this is a work in progress—I think we [meant] with [a] customer—major customer-facing experience, could be small business, could be the big industrials that are also represented here. We have customers of all sizes.").

[283] TURN-01 at 12-13 (reply testimony of Thomas Long).

[284] *Id.* at 12.

That said, PG&E's director skills matrix already includes the criteria TURN recommends, as noted above. Further, PG&E's current Boards significantly exceed the percentage thresholds TURN proposes. Eight of the 15 members of the Utility's Board, and seven of the 14 members of PG&E Corporation's Board, have direct operational and/or significant safety experience in the energy industry, including:

- William Johnson, who has dedicated his decades-long career to delivering safe, reliable, and affordable energy service to millions of customers;
- Andrew Vesey, who has devoted his lengthy career to doing likewise;
- Nora Mead Brownell, who has served as a commissioner of the Federal Energy Regulatory Commission ("FERC") and the Pennsylvania Public Utility Commission, and as a director of numerous energy companies;
- Cheryl F. Campbell, who has more than 35 years of experience with safety and other utility operations, including in CEO, president, and other senior leadership positions;
- Fred J. Fowler, who has more than 45 years of experience in safety and other utility operations, including in CEO, president, and other senior leadership positions;
- Eric D. Mullins, who, as co-CEO of a firm that operates oil and natural gas properties, is responsible for safe operations for a workforce of over 200 employees as well as numerous independent contractors;
- Kristine M. Schmidt, who has more than 35 years of experience in the electricity industry, both in CEO, president, and other senior positions and as a former FERC commissioner advisor; and
- John M. Woolard, who has served as CEO and president of numerous energy technology companies.[285]

Other directors have additional safety experience from other inherently hazardous industries, just as TURN proposes. Such directors include, for example, Alejandro D. Wolff, who has served on the Health, Safety and Environment Committee of Albemarle Corporation (a

[285] These directors' safety and utility operating experience are summarized in more detail on pages 4-14 to 4-15 of Ms. Brownell's opening testimony, and in the Compliance Filing attached as Exhibit 1 thereto (PG&E-04 at 4-Exh.1-1 – 4.Exh.1-64).

public specialty chemicals company); on the boards of Rockwood Holdings and Versum Materials (public specialty chemicals companies) where he chaired the committees responsible for overseeing the company's Health, Safety and Environment policies and practices; and on the board of JetSMART Holdings Limited (an airline operating in South America).[286] PG&E's Boards will continue to look for qualified candidates with such experiences for the Boards on the Effective Date of its Plan.

Board Member Independence. PG&E's Corporate Governance Guidelines require at least 75% of the Boards to be independent as defined in NYSE rules—significantly in excess of the minimum percentage regarded as a best practice.[287] Moreover, *all* of PG&E's current Board members other than Messrs. Johnson and Vesey are independent.[288] Additionally, all Board committee chairs are independent, as are all committee members (except that Mr. Johnson is a member of PG&E Corporation's Executive Committee, and Mr. Vesey is a member of the Utility's Executive Committee).[289]

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[286] *See* PG&E-04 at 4-Exh.1-9, 4.Exh.1-15, 4.Exh.1-20, 4.Exh.1-62 – 4.Exh.1-64 (Compliance Filing in Safety Culture OII describing Mr. Wolff's safety credentials). NorthStar specifically recommended "[a]dd[ing] Independent Directors to the Board who have experience with safety, *perhaps in another industry such as aviation*." (NorthStar Consulting Group, *Final Report: Assessment of Pacific Gas and Electric Corporation and Pacific Gas and Electric Company's Safety Culture*, at I-12 (May 8, 2017) ("NorthStar Report") (emphasis added).)

[287] *See* PG&E-01 at 4-18 (opening testimony of Ms. Brownell); *see also* PG&E-05 at 4-Exh.6-2 (BlackRock, *Proxy Voting Guidelines for U.S. Securities* (Jan. 2019)) ("We expect a majority of the directors on the board to be independent."); PG&E-05 at 4-Exh.3-11 (CalPERS, *supra*) ("Nearly all corporate governance commentators agree that boards should be comprised of at least a majority of 'independent directors.'"); PG&E-05 at 4-Exh.4-3 (CalSTRS, *supra*) ("The board should be comprised of at least two-thirds of independent directors who do not have a material or affiliated relationship with the company, its chairperson, CEO or any other executive officers."); PG&E-06 at 4-Exh.9-10 (Financial Reporting Council, *The UK Corporate Governance Code* (July 2018) ("UK Code") ("At least half the board, excluding the chair, should be non-executive directors whom the board considers to be independent."); NACD, *Board Evaluation: Improving Director Effectiveness*, at 4 ("A board with the right people will have a substantial majority of independent directors … .")

[288] *See* PG&E-01 at 4-18 (opening testimony of Ms. Brownell).

[289] *See id.*; *see also* PG&E-05 at 4-Exh.3-11 (CalPERS, *supra*) ("Committees who perform the audit, director nomination and executive compensation functions should consist entirely of independent directors."); PG&E-05 at 4-Exh.4-4 (CalSTRS, *supra*) ("Companies should have audit, nominating and

Mr. Gorman criticizes what he views as the lack of "separation" between the Boards of PG&E Corporation and the Utility[290] and recommends that the Utility Board "be able to operate independently of its Parent Company Board."[291] PG&E Corporation and the Utility are separate corporate entities with separate Boards. While the members of the two Boards overlap (with the exception that Mr. Vesey serves on the Board of the Utility but not the parent), there is no record basis to question that the directors will act in accordance with their fiduciary duties and legal obligations. Mr. Gorman nevertheless asserts that there is an "inherent conflict" between PG&E Corporation and the Utility.[292] This claim is unsupported and incorrect. PG&E Corporation's only asset (with immaterial exceptions) is the Utility.[293] As such, PG&E Corporation's interests are fully aligned with the Utility's. While Mr. Gorman asserts that the capital investment planning by the Finance Committee of the PG&E Corporation Board "can be problematic to the extent that PG&E Corporation has higher priorities for capital programs outside the Utility than its priorities for the Utility,"[294] that hypothesis does not apply to PG&E Corporation, which has no capital programs outside the Utility.

In addition, the Commission's Holding Company conditions and Affiliate Transaction Rules are designed to protect the Utility and its customers from such a diversion of capital needed by the Utility to carry out its public service mission. The Holding Company conditions, for example, require that the Utility's dividend policy "shall continue to be established by

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compensation committees. Those committees should be composed of at least three independent directors."); PG&E-05 at 4-Exh.6-2 (BlackRock, *supra*) ("[A]ll members of key committees, including audit, compensation, and nominating / governance committees, should be independent.").

[290] TURN-EPUC-IS-02 at 28 (reply testimony of Mr. Gorman).

[291] *Id.* at 31.

[292] *Id.*

[293] *See* PG&E Corporation Annual Report on Form 10-K filed Feb. 18, 2020 at 13, 65, *available at* http://d18rn0p25nwr6d.cloudfront.net/CIK-0001004980/80cdad4f-e17f-4b81-8774-0370bbde5ff3.pdf.

[294] TURN-EPUC-IS-02 at 28 (reply testimony of Mr. Gorman).

PG&E's Board of Directors as though PG&E were a comparable stand-alone utility company," that the "capital requirements of PG&E, as determined to be necessary to meet its obligation to serve, shall be given first priority by the Board of Directors of PG&E's parent holding company and PG&E," and that the Utility shall maintain a balanced capital structure.[295] The Commission adopted these rules in an era in which PG&E and other California investor-owned utilities had active non-regulated affiliates, and the Commission concluded that its holding company conditions would protect utility customers.[296] The Commission subsequently strengthened those protections through its adoption of Affiliate Transaction Rules.[297] While Mr. Gorman asserts in passing that these conditions and rules are insufficient,[298] he provides no data, examples, or other evidence in support.

The Commission's Holding Company Conditions and Affiliate Transaction Rules strike the right balance between protection of the Utility and its customers, on the one hand, and preservation of the parent company's prerogatives to govern the Utility. After all, the holding company owns all of the common stock of the Utility, and as the owner has the right and legal duty to oversee the Utility. The Commission expressly endorsed this principle—and expressly rejected Mr. Gorman's suggestion that the Utility's Board "operate independently" of its parent—in its decision adopting the Affiliate Transaction Rules.[299]

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[295] D.96-11-017 (Ordering Paragraphs 14, 15, 17).

[296] *See id.* (Conclusion of Law 6).

[297] *See* D.06-12-029. For example, Rule IX.A requires the Utility to file certain information with the Commission regarding its capital needs.

[298] *See* TURN-EPUC-IS-02 (reply testimony of Mr. Gorman) at 28.

[299] D.06-12-029 at 20 ("Respondents contend that sound governance principles and duties under [law] … require that holding company officials must have access to all material information about their subsidiaries' businesses. Such information, they argue, is necessary for a holding company to certify the company's financial statements and internal controls and thereby accurately disclose all material information to investors in a timely manner. We agree.")

Finally, Mr. Gorman's undeveloped suggestion that the Utility be "ring-fence[d]" from the holding company[300] should be given no weight. Affiliate Transaction Rule IX.C[301] already addresses this subject, and Mr. Gorman provides no basis to conclude that the existing rule is insufficient.

Board Member Diversity and California Residency. The current Boards are racially and ethnically diverse, and exceed by many multiples the gender diversity requirements of Corporations Code Section 301.3. The Boards are committed to maintaining and enhancing their diversity as new Boards are established on exit[302] consistent with best practices.[303] Board members who reside in California make up 36% of the PG&E Corporation Board and 40% of the

[300] Mar. 4, 2020 Tr. at 1393-94 (cross-examination testimony of Mr. Gorman). The transcript at 1393:21 says only "separation" whereas Mr. Gorman said "ring-fence separation," and at 1394:2 erroneously says "brief and separation" when he actually said "ring-fence separation." The video of the hearing on the Commission's website accurately records his words.

[301] D.06-12-029, App'x A-3, at 32-33.

[302] *See* PG&E-01 at 4-19 (opening testimony of Ms. Brownell); Feb. 28, 2020 Tr. at 769 (cross-examination testimony of Ms. Brownell) ("We have five women now, we want to increase that. We have some demographic diversity that—or ethnic diversity that I think we certainly want to maintain, if not enhance."); *id.* at 770 ("It is the goal of the Board refreshment process to focus on the skills that have been identified in th[e] matrix because, first and foremost, that's important … for the appropriate oversight. But certainly we want as much diversity as we can and that bring those skills. It's how we got five women and the current ethnic diversity. And that will continue to be a focus.").

[303] *See* PG&E-05 at 4-Exh.6-4 (BlackRock, *supra*) ("In identifying potential candidates, boards should take into consideration the full breadth of diversity including personal factors, such as gender, ethnicity, and age … . In addition to other elements of diversity, we encourage companies to have at least two women directors on their board."); PG&E-05 at 4.Exh.7-2 (Deloitte Global Center for Corporate Governance, *Women in the Boardroom: A Global Perspective* (6th ed. 2019)) ("We expect to see a growing consensus that women and other underrepresented groups are critical contributors to a well-composed board. … Increased gender diversity at all levels leads to smarter decision-making, contributes to an organization's bottom line, powers innovation, and protects against blind spots, among other benefits."); PG&E-06 at 4-Exh.8-8 (Deloitte, *2016 Board Practices Report*, *supra*) (noting that board diversity includes "gender, race, ethnicity, generation/age and thought"); NACD, *The Diverse Board: Moving from Interest to Action*, at 8 (2012) ("A comprehensive definition of diversity must include both … identity and skills. Given the nature of the business world today, neither aspect can be excluded from the other.").

Utility Board—and PG&E has committed to use its best efforts to increase these percentages to at least 50% upon Chapter 11 emergence.[304]

PG&E supports the ACR's proposal that "[a]t least 50 percent of the directors … be California residents at the time of their election,"[305] provided that the Boards would retain flexibility to nominate a slate of directors with a lower percentage if doing so would result in more qualified Boards overall.[306] PG&E has committed to "us[ing] its best efforts to achieve a target of at least 50 percent California resident directors at Chapter 11 emergence."[307] PG&E believes that California residency is important, but also believes that it needs to be balanced along with other critical priorities (e.g., ensuring adequate Board experience with wildfire risk mitigation), and the availability of qualified candidates who are willing to serve. The balance between these needs, including California residency, can be determined only after the search is conducted and candidates identified.

Joint CCA witness Mr. Beach proposes that PG&E adopt "a goal of a clear majority of its board members residing in its service territory."[308] In fact, PG&E has included "Pacific Gas and Electric Company customer" in the director skills matrix,[309] and the Boards currently include several directors who reside in PG&E's service territory.[310] As noted, PG&E has a goal that

[304] *See* PG&E-01 at 4-19 (opening testimony of Ms. Brownell).

[305] ACR § 4, App'x A at 5.

[306] PG&E's Boards can only nominate; the shareholders are ones who ultimately determine who the directors shall be. *See* Corp. Code § 301.

[307] PG&E-01 at 4-19 (opening testimony of Ms. Brownell).

[308] JCCA-01 at ii, 18 (reply testimony of Mr. Beach).

[309] PG&E Corporation and Pacific Gas and Electric Company Joint Proxy Statement at 19 (May 17, 2019), *available at* http://s1.q4cdn.com/880135780/files/doc_financials/2019/05/2019-Proxy-Statement-final-web-ready.pdf.

[310] *See* Feb. 28, 2020 Tr. at 695 (cross-examination testimony of Ms. Brownell).

50% of its Boards on exit will be California residents. The Commission should not impose a stricter requirement given the need to find the best candidates with a range of skills.

Board Committee Structure. The PG&E Corporation and Utility Boards use well-defined committee structures with clearly defined responsibilities, consistent with best practices.[311] These committees include Audit Committees, a Compensation Committee, a Compliance and Public Policy Committee, Executive Committees, a Finance Committee, a Nominating and Governance Committee, and SNO Committees. Committee responsibilities are specified in written committee charters.[312] The committees work together, and different committees coordinate on matters that cut across their respective purviews, including through holding joint committee meetings.[313]

SBUA nevertheless has expressed "concern[]" that because safety is related to other subject-matter areas (e.g., compliance), and because different Board committees bear oversight responsibility for different areas, PG&E may not have "a [singular] safety committee of [the] board of directors comprised of members with relevant safety experience within the meaning of [AB 1054]."[314] SBUA does not actually *assert* that PG&E lacks a qualified safety committee, but instead just flags the question and asks PG&E to "clarify what mechanisms are in place to

[311] *See* PG&E-01 at 4-8 (opening testimony of Ms. Brownell); *see also* PG&E-06 at 4.Exh.10-6 (Deloitte Center for Board Effectiveness, *Framing the Future of Corporate Governance* (2016)) (observing that "board committees [have] become increasingly critical to the operations of the board," and that a board should "inventory[] the critical responsibilities of each governance element … and then identify[] those that are appropriate for a board committee and those best addressed by the full board").

[312] *See* PG&E-06 at 4.Exh.13-1 – 4.Exh.22-4 (committee charters); *see also* PG&E-01 at 4-15 – 4-17 (opening testimony of Ms. Brownell) (summarizing committee responsibilities and membership).

[313] *See* PG&E-01 at 4-17 (opening testimony of Ms. Brownell).

[314] SBUA-01 at 7 (reply testimony of Mr. Howard) (first bracket from SBUA; emphasis removed).

assure affective [sic] coordination, clarity of responsibility and role-differentiation within the Board structure."[315] SBUA's concerns and questions are addressed by PG&E's testimony.

"The SNO Committees generally centralize oversight of *all safety issues*, consistent with NorthStar Consulting Group's recommendation to move to greater integration of safety functions given that safety is an enterprise-wide issue."[316] Relatedly, the SNO Committees "oversee matters relating to *compliance* with respect to the Utility's nuclear, generation, gas and electric transmission, and gas and electric distribution operations and facilities."[317] The SNO Committees also are assuming additional safety-related responsibilities that are transitioning from the Compliance and Public Policy Committee.[318] Thus, the SNO Committee of the Utility's Board is the relevant safety committee for purposes of AB 1054, and no party has disputed that its members have the safety experience required by the statute.[319] This is confirmed by the issuance of the initial Safety Certificate to the Utility by the Commission's Executive Director in August 2019.[320]

Because safety is not and cannot be hermetically sealed off from other issues, the SNO Committees necessarily coordinate with other committees, including the Audit Committees and the Compliance and Public Policy Committee.[321] PG&E's testimony explains some of the mechanisms by which this is done:

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[315] *Id.*

[316] PG&E-01 at 4-29 (opening testimony of Ms. Brownell) (emphasis added).

[317] *Id.* at 4-31 n.39 (emphasis added).

[318] *See id.* at 4-16 – 4-17.

[319] *Compare id.* at 4-17 (listing SNO Committee members) *with* PG&E-04 at 4-Exh.1-1 – 4.Exh.1-64 (Compliance Filing in Safety Culture OII detailing director safety qualifications).

[320] *See* Pub. Util. Code § 8389(e)(3) (permitting issuance of a safety certification only upon a showing that a utility has, among other things, "established a safety committee of its board of directors composed of members with relevant safety experience").

[321] *See* PG&E-01 at 4-28 – 4-32 (opening testimony of Ms. Brownell).

> The Audit Committees, the SNO Committees, and the Compliance and Public Policy Committee … work together to help ensure proper oversight [of safety, risk, and compliance]. These committees meet jointly at least twice a year to coordinate their efforts to ensure that significant issues are being reviewed appropriately. They also frequently meet with the Federal Monitor or his delegates. The committees' written charters … ensure that the committees have the appropriate authority and funding to carry out their respective responsibilities, and the charters also formalize requirements for regular reports and communications from senior management.[322]

PG&E's testimony thus addresses the questions SBUA raised about the SNO Committees and their coordination with other committees.

SBUA separately notes that "the list [in Ms. Brownell's opening testimony] of responsibilities of PG&E's Board committees does not specify SMB [small and medium business] services or program oversight," and SBUA wonders which committee has such oversight.[323] Because PG&E does not have an "SMB Committee"—and no party contends that it should—the answer to SBUA's question is that it depends on the issue. For example, if it is a safety or safety-related compliance issue affecting small and medium businesses, it falls within the purview of the SNO Committees; whereas if it is a different type of compliance issue affecting small and medium businesses, or a public policy issue, it generally falls within the purview of the Compliance and Public Policy Committee.

Board Oversight of Safety, Risk, Compliance, and PSPS. The current Boards have made focused efforts to improve oversight of safety, risk, and compliance. For example, Board and/or committee meetings are regularly attended by senior management, including the PG&E Corporation and Utility CEOs, the CECO, the interim CSO, and the CRO.[324] The Boards and the

[322] *Id.* at 4-28; *see also id.* at 4-29 ("The Audit Committees … annually receive and review a report summarizing the primary categories of risk management activities and allocate oversight for specific enterprise risks and 'enterprise risk topics' … among various Board committees. This allocation generally has assigned oversight of safety risks to the SNO Committees.").

[323] SBUA-01 at 17 (reply testimony of Mr. Howard).

[324] *See* PG&E-01 at 4-19 (opening testimony of Ms. Brownell).

SNO, Audit, and Compliance and Public Policy Committees also receive regular reports from these officers concerning establishment of and performance on safety, compliance, ethics, and risk metrics.[325]

Additionally, the Boards have worked closely with management to make significant improvements to how PG&E identifies, measures, and mitigates risk, including through its quantitative-based Enterprise and Operational Risk Management program.[326] The Boards also have supported the creation of the ISOC, which will be a technical resource to the Boards and management and will provide an additional layer of oversight of safety performance.[327] The Boards also have consulted extensively with the Federal Monitor and his team, including in executive sessions without management present.[328] As discussed in Part IV.B.2.c.ii below, the Boards also support the ACR's proposal for an Independent Safety Advisor to be appointed once the Federal Monitorship and/or probation ends, and support having such Advisor work with PG&E's Boards, Chief Risk Officer, Chief Safety Officer, and other management to develop recommendations to address compliance issues and enhance PG&E's safety performance. The Boards also have set a precedent for Board members making scores of visits to the field "to be visible, engaged, and knowledgeable" with employees and the community, and "to get a really intense deep dive into all of the business practices of the Company."[329]

The Boards also have been keenly attuned to oversight of PSPS events. Board members spent significant time in PG&E's Emergency Operations Center ("EOC") during the October and November 2019 PSPS events; attended meetings with state and local officials (including Cal

[325] *See id.* at 4-19, 4-28 – 4-32.

[326] *See id.* at 4-23 – 4-25.

[327] *See id.* at 4-25 – 4-26; *see also id.* at 5-23 – 5-25 (opening testimony of Mr. Vesey).

[328] *See id.* at 4-27 – 4-28 (opening testimony of Ms. Brownell).

[329] Feb. 28, 2020 Tr. at 693 (cross-examination testimony of Ms. Brownell).

OES and the California Department of Forestry and Fire Protection) to discuss how PG&E's execution of PSPS could be improved; and met with the Sonoma County Farm Bureau, and tribal representatives in Sonoma and Humboldt Counties, to get their post-event feedback.[330] The Boards also are focused on overseeing PG&E's efforts to reduce the incidence and impacts of PSPS through a variety of initiatives.[331]

Although the Boards indisputably have been heavily engaged in overseeing safety, risk, compliance, and PSPS, intervenors CLECA and TURN nevertheless make a number of proposals that they believe could improve the Boards' oversight. PG&E responds to these proposals as follows:

ISOC Reporting. CLECA proposes that the ISOC (or an equivalent technical advisor) "not report to PG&E Management but instead report *only* to PG&E's Board."[332] CLECA does not explain why the ISOC's reports should not also be circulated to management, which can benefit from such input. To the extent CLECA is concerned that the ISOC somehow will be beholden to management, its concern is misplaced. ISOC providing reports to management does not undermine the ISOC's independence. Moreover, "[a]ll of the ISOC's members besides [the chair Christopher] Hart are external to PG&E," and thus the ISOC is able to do its job independently—gathering information from management, but not answering to management.[333]

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[330] *See* PG&E-01 at 4-32 (opening testimony of Ms. Brownell); *see also* Feb. 28, 2020 Tr. at 723 (cross-examination testimony of Ms. Brownell) ("I was in the EOC. I was working with the team to find quick solutions. It is why we spent the time since then with a number of work streams to address those issues.").

[331] *See* PG&E-01 at 4-33 (opening testimony of Ms. Brownell).

[332] CLECA-01 at 5 (reply testimony of Ms. Yap) (emphasis added).

[333] PG&E-01 at 4-26 (opening testimony of Ms. Brownell); *see also* PG&E-01 at 5-24 (opening testimony of Mr. Vesey) ("In addition to Mr. Hart, all of the other [ISOC] members are independent and external to PG&E, although certain Utility employees will assist individual [ISOC] members in performing their duties.").

Finally, the Boards have the prerogative to retain their own advisors to the extent they deem it necessary or advisable to do so.[334]

Commission Audits Of Board Deliberations. CLECA proposes, in a single sentence, that "the Commission require the Board to conduct a rigorous evaluation of every major safety proposal made by Management and subject that evaluation process to an after-the-fact audit process conducted either by Commission staff auditors or outside auditors hired by the Commission at the expense of PG&E's shareholders."[335] CLECA does not explain what this proposal would entail, or what purpose it would serve. PG&E's Boards already evaluate the "major safety proposal[s]" management brings to them; that is a basic function of the board of a utility. CLECA's proposal that the Commission's staff begin "auditing" Board discussions and deliberations is as unexplained as it is unprecedented; CLECA does not say what the Commission's staff would be looking for, why the staff should become the arbiters of the quality of Board deliberations, why or how the staff are well-positioned to serve that role, or how such a regime could co-exist with the business judgment rule. Whatever CLECA hopes this proposal might accomplish, PG&E respectfully submits that the proposal is neither appropriate nor productive. PG&E also notes that, as discussed below, PG&E supports the ACR's proposals that the SNO Committees provide periodic reports to the Commission, that PG&E's CRO appear before the Commission or meet with Commission staff at least quarterly, and that the appropriate officer (CEO, CRO, or CSO) provide semiannual performance reports to the Commission staff relating to public safety and related matters. PG&E believes that such reporting should address whatever concerns are animating CLECA's proposal.

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[334] PG&E-01 at 4-15, 4-31 (opening testimony of Ms. Brownell) (noting that the Compensation Committee uses "independent compensation consultants, legal counsel, [and] other advisors," and that the SNO Committees "have authority to hire third-party safety and utility operations experts").

[335] CLECA-01 at 6 (reply testimony of Ms. Yap).

Employee/Managerial Codes. CLECA proposes that PG&E review and potentially revise its Employee Code of Conduct "to ensure the most complete and … understandable communication of ethical standards."[336] TURN similarly proposes that "the Commission should direct, as a condition of Plan approval, that [PG&E] agree to propose, in a filing with the CPUC shortly after PG&E's exit from bankruptcy, a Code of Managerial Expectations."[337] TURN says that "[t]he Commission should allow interested parties to address [the proposal] in this or another docket of the Commission's choosing, with a goal of reaching a Commission decision on a required Code within one year of PG&E's exit from bankruptcy."[338]

PG&E agrees that it could be constructive for the Boards to consider updating the Employee Code of Conduct and developing a separate Code of Managerial Expectations. PG&E views this, however, as falling squarely within the traditional function of a board and its business judgment. PG&E does not agree that it needs to be part of a Commission proceeding, and in particular the language of these Codes should not be imposed as a condition of approval of PG&E's Plan.

Written Certification Regarding Safety. TURN proposes that Board members be required to "agree[] in writing that safety is PG&E's highest objective and that financial goals such as enhancing shareholder value[] are secondary."[339] TURN's proposal, in the abstract, is laudable—certainly "[t]he Boards view customer and workforce safety as PG&E's first and highest imperative …. because safety is the right thing to do, period."[340] The implementation of

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[336] *Id.* at 9.

[337] TURN-01 at 23 (reply testimony of Mr. Long).

[338] *Id.* at 24.

[339] *Id.* at 11.

[340] PG&E-01 at 4-23 (opening testimony of Ms. Brownell); *see also id.* at 4-1 (stating that "customer and workforce safety [are] PG&E's first and highest priority"); *id.* at 4-2 ("The Boards' first and highest priority is keeping customers and workers safe as PG&E provides reliable, affordable, and clean energy to

TURN's proposal, however, presents a number of issues that render the proposal impractical and unnecessary.

To illustrate, suppose PG&E devised a means of eliminating all risk of carpal tunnel syndrome for its office workers, but it would cost $10 billion to implement and thus financially devastate the companies. TURN's proposal would raise numerous questions, such as whether the directors, having certified in writing that safety takes precedence, would be obligated to cause PG&E to make that safety investment, whether they would face personal liability if they did not, whether they would be obligated to cause PG&E to spend the money if it only cost $150 million or only $1 million, how they would know where the line is if indeed there is a line, whether they would be obligated to cause PG&E to spend the money if PG&E could deploy the same funds to improving system reliability or advancing the State's clean energy goals, and how the directors could be sure that the written certification TURN proposes would not be used against them in shareholder derivative or other litigation challenging their exercise of business judgment. Qualified director candidates undoubtedly would think twice about serving on PG&E's Boards if they were required to provide the written certification TURN proposes, given its uncertainties in application and its potential consequences for personal director liability.

Moreover, TURN's proposal has no logical stopping point. It is unclear why the directors would not also be required to certify in writing that reliability takes precedence over financial performance, or that the State's clean energy goals takes precedence, or that

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its customers while returning to financial stability and health."); *id.* at 1-1 (opening testimony of Mr. Johnson) ("PG&E is in the process of making, and is dedicated to, transformative change to ensure that we prioritize safety and our customers' welfare, and PG&E commits to continue these efforts as it emerges from Chapter 11 under its plan."); *id.* at 5-4 (opening testimony of Mr. Vesey) ("[T]he Utility's future success depends on focusing on customer and workforce welfare across all its dimensions—including, most critically, safety culture and performance … .").

compliance with laws and ethical standards takes precedence. It is unclear where the road TURN is proposing would lead, or what the potential consequences would be.[341]

Further, TURN's proposal rests on a false dichotomy between safety and financial performance, when the reality is that "[s]afety and financial performance go hand in hand at PG&E."[342] As Ms. Brownell explained in her opening testimony:

> Strong safety performance is vital for solid financial performance, and conversely, strong financial performance is necessary to fund safety improvements such as system hardening. For example, a catastrophic public safety event can have a devastating effect on the companies' financial performance, as demonstrated by the current Chapter 11 proceedings and the substantial decline in PG&E Corporation's stock price since the 2017 and 2018 wildfires. Conversely, poor financial performance can, at a minimum, increase the costs of the capital needed to fund safety investments—increased costs that are passed on to customers. Extended poor financial performance also can lead to an inability to raise capital or fund programs, a loss of talent, and a need to increase rates.[343]

Ms. Brownell expanded on this during cross-examination:

> I believe a fiduciary responsibility to shareholders means that we do everything possible to deliver value to the customers, to the communities, and to other stakeholders. That's particularly true, I think, in a utility where both the economy but the very well-being of individuals in the community is part of that duty.
>
> …
>
> If I'm not serving the customers, if I have a massive failure in safety, as we have seen, if the people who purchase my services and pay my bills are not satisfied, that has a direct translation into the financial well-being of the Company. In other words, the stock price declines significantly when you have ignored these fundamental responsibilities. So I think it's—you asked the question honestly as if

[341] *See* Feb. 28, 2020 Tr. at 719 (cross-examination testimony of Ms. Brownell) ("But we could also sign something that says if fiduciary responsibilities and reliability came into conflict or sustainability or environmental stewardship. I—you know, all of those are underpinnings of a successful company and, therefore, its financial—its financial stability and performance. So I understand why you would like that. . . . I believe we're held accountable to a standard of performance, particularly when you're elected year by year.").

[342] PG&E-01 at 4-23 (opening testimony of Ms. Brownell).

[343] *Id.*

they're mutually exclusive, and I don't believe that's actually a reflection of how it works.[344]

Simply put, TURN, PG&E, and PG&E's Boards are in wholehearted agreement that safety is job one. TURN's proposal for some sort of written certification, however, is problematic on numerous levels.

2. PG&E Supports Numerous Of The ACR's Proposals Regarding Board-Level Governance.

PG&E supports nearly all of the ACR's Board- and Board-committee related proposals, albeit with clarifications in some instances.

(a) Proposals Regarding The SNO Committees (ACR § 3)

SNO Committee Responsibilities and Reporting. PG&E supports the ACR's proposal that the SNO Committees "provide oversight of PG&E's wildfire mitigation plan, Public Safety Power Shutoff … program, and related investments," and "[c]ompliance with [any] Safety and Operational Metrics" that may be adopted.[345] PG&E also supports the ACR's proposal that the SNO Committees provide "[p]eriodic reporting to [the Utility's] and PG&E Corporation's boards of directors and the CPUC staff, including, when appropriate, detailed recommendations based on [the Committees'] review of PG&E's expenditures, protocols, and procedures with respect to the foregoing."[346] PG&E also supports the ACR's proposal that the SNO Committees have oversight of "PG&E's responses to the recommendations of the Independent Safety Advisor, if one is [appointed]."[347]

Following a Commission decision adopting this proposal, PG&E would implement it by amendments to the SNO and Compliance and Public Policy Committee charters, which would be

[344] Feb. 28, 2020 Tr. at 714-15 (cross-examination testimony of Ms. Brownell).

[345] ACR § 3, App'x A at 4.

[346] *Id.*

[347] *Id.*

filed as part of the Plan Supplement in the Chapter 11 cases, and which would identify specific risk elements that must be addressed by the SNO Committee.[348] The charters would be effective no later than the Effective Date of the Plan. PG&E would not amend the SNO Committee charters to modify or limit the effect of the proposal as adopted without advance notification to the Commission. The additional responsibilities of the SNO Committees would remain in effect unless and until the Commission approves their elimination based on PG&E's post-Effective Date safety and operational history.

Third-Party Advisors. PG&E supports the SNO Committees having "authority to hire third-party safety and utility operations experts to advise and provide analysis to assist them with their oversight responsibilities."[349] In fact, the SNO Committees already have "authority to hire third-party and utility operations experts."[350]

SNO Committee Selection and Membership. PG&E supports the ACR's proposal for "consultation with or approval by the State [which PG&E construes to mean the Governor's Office] … for the initial members of the SNO Committees" upon Chapter 11 emergence.[351] It is the responsibility of the Boards to determine committee membership based on the Boards' detailed knowledge of the Board members' qualifications and to balance the workloads of directors across the various committees. In carrying out this responsibility, the Boards will take into account the views of management and various stakeholders, including ensuring that the SNO

[348] The charter of the SNO Committee will be included in the Plan Supplement or other documents filed with the Bankruptcy Court. PG&E will ensure that all such documents implementing the ACR's Proposals as filed with the Bankruptcy Court will be in a form acceptable to the Governor's Office.

[349] *Id.*

[350] PG&E-01 at 4-31 (opening testimony of Ms. Brownell).

[351] ACR § 3, App'x A at 4.

Committee members are acceptable to the Governor's Office, but the Boards retain the ultimate authority to appoint committee members.

Given the role of the Governor's Office, and the need to act quickly, PG&E believes that consultation with or approval from the Commission staff regarding SNO Committee membership is neither necessary nor appropriate. Initially, PG&E views this proposal as impractical given the timeline. PG&E expects its post-emergence SNO Committee members to be designated before the Commission issues its decision in this proceeding. As such, a Commission decision directing PG&E to consult with staff would likely be moot when issued. In addition, there is no record evidence or other basis to question the ability of the Boards to select qualified members of the SNO Committee. PG&E believes that the process outlined above—in which the Boards consult with the Governor's Office and other stakeholders before selecting the members of the SNO Committees—should be sufficient to provide confidence that the members of the SNO Committees will be well qualified.

PG&E does not oppose having a Board-level safety subcommittee approve post-emergence SNO Committee members, if such a subcommittee is formed (though as discussed below, PG&E believes such a subcommittee is unnecessary and would be counterproductive).

(b) Proposals Regarding the Boards As A Whole (ACR § 4)

Board Member Characteristics. PG&E supports the ACR's proposal to evaluate Board member candidates based in part on "[t]he character of the candidates and their fit with the board culture such as self-awareness, integrity, ethical standards, judgment, interpersonal skills and relations, communication skills, and ability to work collaboratively with others."[352] PG&E already evaluates candidates through this lens; as stated in its most recent proxy statement,

[352] ACR § 4, App'x A at 5.

PG&E's "goal is to create for each company a balanced and multi-disciplinary Board composed of qualified, dedicated, and highly regarded individuals who have experience relevant to the company's operations, understand the complexities of the company's business environment, and possess capabilities to provide valuable insight, judgment, and oversight."[353]

PG&E also supports the ACR's proposal to evaluate Board member candidates in part based on "[i]mportant public policy objectives such as diversity, representation from regions PG&E serves, and commitment to California's clean energy goals."[354] As noted, PG&E seeks to constitute and has constituted Boards that are diverse across multiple dimensions of experience and demographic characteristics. Also, PG&E has included "Pacific Gas and Electric Company customer" on the director skills matrix,[355] and the Boards currently include several members who reside in PG&E's service territory.[356] PG&E intends to ensure that Board members are committed to PG&E's efforts to further California's clean energy goals.

PG&E also supports the ACR's proposal to have "[p]ossible limitations on serial or 'professional' directors," although PG&E recommends deleting the further provision that would restrict "directors [who] have substantial relationships with investment funds and investors in PG&E."[357] PG&E's Corporate Governance Guidelines address this issue by placing sharp limits on directors' ability to serve on other boards (e.g., a prohibition on serving more than three other public company boards without permission from the PG&E Corporation or Utility Board, as

[353] PG&E Corporation and Pacific Gas and Electric Company Joint Proxy Statement at 37 (May 17, 2019), *available at* http://s1.q4cdn.com/880135780/files/doc_financials/2019/05/2019-Proxy-Statement-final-web-ready.pdf.

[354] ACR § 4, App'x A at 5.

[355] PG&E Corporation and Pacific Gas and Electric Company Joint Proxy Statement at 19 (May 17, 2019), *available at* http://s1.q4cdn.com/880135780/files/doc_financials/2019/05/2019-Proxy-Statement-final-web-ready.pdf.

[356] *See* Feb. 28, 2020 Tr. at 695 (cross-examination testimony of Ms. Brownell).

[357] ACR § 4, App'x A at 5.

applicable).[358] PG&E believes that that is sufficient. Limiting or precluding directors who have relationships with investors would send a negative message to investors, thereby hindering PG&E's ability to raise capital. PG&E's shareholders own the company, and by law are permitted to choose who shall oversee its business and affairs;[359] disenfranchising the owners would be illogical and could deter investment.

In addition, precluding directors who have relationships with investment funds or with PG&E investors would drastically reduce the pool of qualified candidates. Major investment funds (e.g., BlackRock and Vanguard) often hold significant stakes in numerous U.S. companies, including energy companies whose directors or officers could be well qualified to serve as PG&E Board members. Depending on how broadly the ACR's proposal is construed, it could act as a complete bar to PG&E recruiting individuals from such companies, on the ground that they have a relationship with a major investment fund. Alternatively, the proposal could require an impractical investigation into the ties the individual has to the investor, such as how the individual was selected for that other company's board, and the extent and nature of communications the individual has with the investor. PG&E is concerned that the proposal would be difficult to implement in practice, and in any event would prevent PG&E from recruiting qualified candidates. Fundamentally, PG&E needs to assemble the most experienced and qualified Boards it can, and artificially limiting the pool of candidates would undercut that important goal.

Safety Expertise Criteria. PG&E supports the use of Safety Expertise Criteria. Indeed, PG&E would go further than the ACR by applying the Safety Expertise Criteria to all members

[358] *See* PG&E-01 at 4-20 (opening testimony of Ms. Brownell).

[359] *See* Corp. Code § 301.

of the SNO Committees. In addition to the criteria listed in the ACR, PG&E recommends that the Safety Expertise Criteria also include:

- Specific substantial expertise related to management of large organizations;
- Specific substantial expertise related to utility operations;
- Specific substantial expertise related to compliance; and
- Specific substantial expertise related to turnaround of substandard performance.

These additional criteria are important for the directors who are charged with responsibilities by other portions of the ACR. For example, directors who meet these criteria would be responsible for overseeing the corrective action plans under the enhanced oversight and enforcement process. A corrective action plan requires operational change, and as such directors with experience in managing large organizations, utility operations, and turnarounds would be particularly valuable. In addition, because the triggers for the Enhanced Oversight and Enforcement Process, and the associated corrective action plans, could include compliance,[360] expertise in this area is a relevant skill. The ACR also would require the directors who meet the Safety Expertise Criteria to approve senior management,[361] which includes functions such as legal and finance; experience with managing large organizations and compliance would be relevant to carrying out such responsibilities.

PG&E recommends that the Commission adopt these additional Safety Expertise Criteria whether or not it accepts PG&E's recommendation to make the SNO Committees responsible for carrying out the responsibilities that the ACR describes for the safety subcommittee. PG&E notes, however, that this broadened set of Safety Expertise Criteria also would facilitate the

[360] ACR § 10, App'x A at 10 (Steps 1.A.i, 1.A.ii, 2.A.ii, 2.A.iv, 4.A.ii).

[361] *Id.* § 5, App'x A at 6.

composition of SNO Committees, as it could prove difficult for all members of the SNO Committees to meet the narrower set of Safety Expertise Criteria set forth in the ACR.

Board Member Search Firm. PG&E generally supports the ACR's proposal that, for "the initial selection of [the Utility's] and PG&E Corporation's boards of directors upon emergence from bankruptcy," "[t]he selection process shall provide for consultation with or approval by the State and CPUC staff on any firm retained to identify new board candidates and to assist in refining the skills matrix."[362] In fact, PG&E recently retained not one, but two, nationally recognized search firms to assist with PG&E's effort to create new Boards as the companies emerge from Chapter 11: The Leadership Lyceum LLC ("Leadership Lyceum") and Rich Talent Group. PG&E retained these firms in consultation with the Governor's Office.

Leadership Lyceum is a professional search firm that helps clients improve their ability to recruit superior talent and make improved decisions around candidate selection. The firm combines strong search processes with tailored and innovative service. Its team has extensive experience with search assignments, including in the utility and energy sectors.[363] Leadership Lyceum was retained by the California Independent System Operator ("CAISO") to provide services in connection with the selection of candidates for CAISO's Board of Governors.[364]

Rich Talent Group also is a professional search firm, based in San Francisco. It likewise has extensive experience building diverse and transformative leadership teams and boards. Rich Talent Group has a deep network of talent and substantial expertise in developing creative

[362] *Id.* at 5.

[363] *See generally* https://www.leadershiplyceum.com.

[364] *See* CAISO, *California ISO Seeks Stakeholder Participation in Board Nominee Review Committee* (Sept. 24, 2019), *available at* http://caiso.com/Documents/CaliforniaISOSeeksStakeholderParticipation-BoardNomineeReviewCommittee.html.

solutions to find the right talent for their clients. Its clients include Comcast, Dropbox, Square, Weight Watchers, Warby Parker, and Zillow.[365]

If, prior to confirmation of the Plan, the search firms recommend changes to the director skills matrix or the Safety Expertise Criteria, PG&E commits that it will ensure that such changes are acceptable to the Governor's Office.

Board Member Selection Process. PG&E supports the ACR's proposal that "the independent search firms retained by PG&E … vet all candidates for the boards of directors (other than the CEOs) and prepare a list of candidates that meet the skills matrix and are qualified to serve on PG&E and PG&E Corporation's boards of directors."[366] In developing the list of qualified candidates, the search firms will receive input from all interested stakeholders, including any input the Governor's Office may wish to provide. PG&E supports the portion of the ACR that contemplates PG&E engaging in "consultations with and [receiving] approval from the [Governor's Office] on the directors for the initial boards before emergence from bankruptcy."[367] As the first step in the process, PG&E proposes that the search firms transmit to the Nominating and Governance Committee a list of the candidates that the firms believe are qualified to serve on the initial post-emergence Boards based on PG&E's director skills matrix. The search firms were retained by the Nominating and Governance Committee, and as such should provide its report to that entity. As the second step, the Committee would transmit the list without modification to the Governor's Office. Third, the Governor's Office could remove any candidates deemed unacceptable. Fourth, the Nominating and Governance Committee would

[365] *See generally* http://richtalentgroup.com.

[366] ACR § 4, App'x A at 6.

[367] *Id.*

draw from the remaining names to recommend a slate to the full Boards for approval. Through this process, PG&E would ensure that the slate is acceptable to the Governor's Office.

With one exception, PG&E also supports the ACR's proposal that, "[a]fter the selection of the initial boards, and after emergence, for a continuous period of seven years the Nominating and Governance Committee of PG&E Corporation should nominate director candidates, [with such] nominations based on the list of directors that meet the skills matrix" that PG&E refines in consultation with its search firm(s).[368] The exception is that PG&E believes that a fixed period of seven years is not preferred. Instead, as discussed below, PG&E recommends that all of the Board governance provisions in the ACR (ACR §§ 3, 4, and 5) that are not by their nature limited to the near term should sunset on the earlier of (1) five consecutive years in which PG&E has not entered the Enhanced Oversight and Enforcement Process (steps 3 and above); (2) if PG&E has entered and subsequently exited the Process, PG&E has remained out of the Process for two consecutive years; or (3) the Commission has approved a change in control ("Sunset Date"). PG&E also supports the ACR's proposal that "[g]oing forward," PG&E continue its existing practice of "us[ing] a skills matrix for selecting board of director candidates."[369] Specifically, after the Effective Date, and until the Sunset Date, the Board will nominate only directors that are qualified directors, as determined by one or more independent search firms based on the then-applicable director skills matrix.

Board Size and Overlap. PG&E supports the ACR's proposal that both Boards be comprised of between 12 and 15 members, with the PG&E Corporation CEO being one such

[368] *Id.* PG&E supports using one or more search firms "to assist in refining its skills matrix." *Id.* at 4. PG&E does not support ceding authority for development of the matrix to the search firm(s). *See id.* at 5 (referring to "the skills matrix selected by the independent search firms").

[369] *Id.* at 4.

member.[370] PG&E also supports the ACR's proposal that the memberships of the respective Boards be the same with the exception that the CEO of the Utility also would serve on the Board of the Utility.[371] PG&E's current Board sizes and memberships already fulfill these proposals.[372]

Board Member Independence. PG&E supports the ACR's proposal that "[t]he directors, other than the two executive officers, … be independent directors as defined by the New York Stock Exchange and the Securities and Exchange [Commission]."[373] As noted, PG&E's Corporate Governance Guidelines already require at least 75% of the directors to be independent, and PG&E is prepared to amend the guidelines to mandate the higher percentage proposed in the ACR. As noted, PG&E's current Boards already satisfy that higher threshold.

Board Member Residency. As discussed above, PG&E supports the ACR's proposal that "[a]t least 50 percent of the directors … be California residents at the time of their election,"[374] provided that the Boards would retain flexibility to nominate a slate of directors with a lower percentage if the Boards conclude, and the Governor's Office agrees, doing so would result in more qualified Boards overall.[375] PG&E anticipates that California residency would be one of the attributes of the candidates that would be addressed in consultation with the Governor's Office.

Board Member Terms. PG&E is prepared to accept the ACR's proposal for longer than one-year "terms with no term limits," though it has concerns with the proposal and therefore

[370] *See id.* at 5.

[371] *See* ACR § 4, App'x A at 5.

[372] *See* PG&E-01 at 4-13 (opening testimony of Ms. Brownell).

[373] ACR § 4, App'x A at 5.

[374] *Id.*

[375] PG&E's Boards can only nominate; the shareholders are ones who ultimately determine who the directors shall be. *See* Corp. Code § 301.

proposes to modify it.[376] PG&E's Board members currently serve one-year terms, consistent with the consensus of CalSTRS, CalPERS, and other major institutional investors that "directors should be accountable to the shareholders they represent and therefore should stand for election every year."[377] Moreover, if PG&E's Board member terms were longer than one year, then PG&E would be legally required to stagger or classify its Boards[378]—which ISS and other institutional investor organizations disfavor, which can result in "no" votes on directors, and which therefore can render directors more vulnerable to proxy challenges.[379] In any event, PG&E believes that the three-year terms proposed in the ACR are simply too long, and too far afield from recognized best practices.

PG&E recognizes that, when it emerges from Chapter 11, there is a potential benefit in the near future to have greater stability in the Boards than in other, more normal times. Accordingly, PG&E proposes that, if the Commission decides to require terms longer than one

[376] ACR § 4, App'x A at 5.

[377] PG&E-05 at 4-Exh.4-4 (CalSTRS, *supra*); *see also* PG&E-05 at 4-Exh.3-10 (CalPERS, *supra*) ("Every director should be elected annually. Accountability mechanisms may require directors to stand for election on an annual basis … ."); PG&E-05 at 4-Exh.6-5 (BlackRock, *supra*) ("[D]irectors should be re-elected annually … ."); PG&E-06 at 4-Exh.9-11 (UK Code) ("All directors should be subject to annual re-election.").

[378] *See* Corp. Code § 301(a) (providing that "[e]xcept as provided in Section 301.5, at each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting," unless a shorter term is provided); *id.* § 301.5(a) (providing that "[a] listed corporation may … adopt provisions to divide the board of directors into two or three classes to serve for terms of two or three years respectively").

[379] *See* PG&E-06 at 4-Exh.12-13 (ISS, *United States Proxy Voting Guidelines Benchmark Policy Recommendations* (Nov. 2019)) (describing as "[p]roblematic" "[a] classified board structure" or if "[t]he company has opted into, or failed to opt out of, state laws requiring a classified board structure"); PG&E-06 at 4-Exh.11-15 (Glass Lewis, *An Overview of the Glass Lewis Approach to Proxy Advice* (2020)) ("[W]e may recommend that shareholders vote against the chair of the governance committee, or the entire committee, where the board has amended the company's governing documents to reduce or remove shareholder rights … . Examples … include … the adoption of a classified board structure … ."); PG&E-05 at 4-Exh.6-5 (BlackRock, *supra*) ("[C]lassification of the board dilutes shareholders' right to promptly evaluate a board's performance and limits shareholder selection of directors."); PG&E-05 at 4-Exh.4-4 (CalSTRS, *supra*) ("The board is expected to be declassified and not have staggered terms.").

year, it permit two-year terms, with two classes of directors and a phase-out. Specifically, PG&E would propose:

- Directors in Class A would have an initial term of one year (2020 through 2021), and thereafter would have a term of two years (2021-2023). Class A directors would be phased out after 2023, such that directors elected in 2023 and thereafter would serve one-year terms.

- Directors in Class B would have an initial term of two years (2020-2022), followed by another term of two (2) years (2022-2024). Class B directors would be phased out after 2024, such that directors elected in 2024 and thereafter would serve one-year terms.

PG&E believes the foregoing structure would strike a better balance than three-year terms between the accountability provided by one-year terms, and the stability and continuity provided by longer terms.

To implement the foregoing Board governance provisions, PG&E Corporation and the Utility would amend their bylaws consistent with the Commission's decision adopting the proposals. These bylaw amendments would be included in the Plan Supplement filed in the Chapter 11 cases and would be effective as of the Effective Date of the Plan. In addition, the members of the Boards as of the Effective Date of the Plan will be disclosed in a filing made in the Bankruptcy Court prior to confirmation of the Plan. Following the Effective Date, and prior to the Sunset Date, if PG&E wishes to modify the director skills matrix, it would file a Tier 2 advice letter, giving the Commission the opportunity to disapprove such amendment.

* * *

Though PG&E supports to the extent set out above the vast majority of the Board-related proposals in ACR § 4, there are two proposals that PG&E does not support:

First, PG&E does not support "a presumption that the reorganized [Utility] and PG&E Corporation boards of directors will be comprised of individuals not currently serving on the

boards."[380] There is no evidentiary basis in the record for such a presumption, and it therefore would be arbitrary and capricious. No party has submitted any evidence whatsoever suggesting that any of PG&E's current directors is unqualified to serve, much less that all directors are unqualified—and PG&E submitted substantial evidence of the directors' extensive safety, utility operating, and other experience.[381] Moreover, PG&E is acutely concerned that a departure of all independent directors en masse would lead to a loss of continuity and institutional knowledge, particularly after the significant Board turnover in 2019—which could hamper safety and other initiatives, especially as we enter the California wildfire season.[382]

That said, PG&E expects a substantial change in the Boards in 2020. As PG&E emerges from Chapter 11 and the Boards' needs change, a number of the current directors will depart and be replaced.[383] PG&E believes that some existing directors should continue, and those willing to continue should be vetted by the independent search firms consistent with the director skills matrix. PG&E is committed to ensuring that the 2020 Board process is carried out in consultation with the Governor's Office as described above.

Second, PG&E believes that it would be unnecessary, confusing, and redundant to "constitute a 'Safety Subcommittee' of the executive committee[s] of the board[s] of directors."[384] PG&E does not believe that such a subcommittee is necessary to fulfill the ACR's stated rationale, namely, "[t]o ensure that PG&E has a mechanism to incorporate safety in

[380] ACR § 4, App'x A at 5. PG&E understands this proposal to relate only to the independent directors. PG&E in all events expects its CEOs to continue serving on the respective Boards.

[381] *See* PG&E-01 at 4-13 – 4-15 (opening testimony of Ms. Brownell); PG&E-04 at 4-Exh.1-1 – 4.Exh.1-64 (Compliance Filing in Safety Culture OII detailing the directors' safety and other qualifications).

[382] *See* NorthStar Report at I-2 (finding that "re-organization and considerable turnover within corporate safety" have delayed safety initiatives).

[383] *See* PG&E-01 at 4-22 – 4-23 (opening testimony of Ms. Brownell).

[384] ACR § 4, App'x A at 5.

decisions of the board of directors";[385] as made clear throughout the testimony of Ms. Brownell, safety already is front and center in the boardroom at PG&E, and central to the Boards' decision-making.

Moreover, PG&E has endeavored, consistent with NorthStar's recommendation, to move to greater *integration* of the safety function, not greater splintering of it, given that safety is inherently an enterprise-wide issue.[386] Thus, PG&E generally centralizes oversight of *all* safety issues in the SNO Committees, and as noted above, supports the ACR's proposal to expand the Committees' oversight (ACR § 3). PG&E believes that a separate safety subcommittee would be contrary to these efforts, potentially leading to confusion and even a loss of accountability when it comes to who is responsible for safety oversight.

Additionally, as noted above, PG&E proposes additions to the Safety Expertise Criteria to ensure that SNO Committee members have diverse safety, compliance, and related expertise. If PG&E formed a safety subcommittee of the Executive Committees, its members necessarily would need the same or similar experience. As a practical matter, this would mean that safety subcommittee members would also be SNO Committee members. The workload of those overlapping members would be substantial and potentially unreasonable, whereas the responsibilities could be more easily managed if centralized in the SNO Committees.

PG&E appreciates that the SNO Committees have many important safety-related responsibilities, and that some stakeholders may be concerned that these responsibilities are too numerous. PG&E therefore respects the view that a safety subcommittee could be efficacious and is willing to accept it if that is the Commission's decision. On balance, however, PG&E

[385] *Id.*

[386] *See* NorthStar Report at IV-1 (noting that "silos of expertise" were problematic and undercut safety efforts).

recommends allowing the SNO Committees to continue to exercise oversight of all safety matters, including the new responsibilities that the ACR proposals would give to the directors who meet the Safety Expertise Criteria, as PG&E believes this is the best way to ensure the adequacy of such oversight across the enterprise.

(c) Proposals Regarding Approval Of Executive Officers (ACR § 5)

The ACR proposes that "the Safety Subcommittee … affirmatively vote to approve PG&E's executive officers in addition to any other board approvals that may be required."[387] PG&E's full Boards already approve the executive officers, and PG&E does not object to having the SNO Committees do so prior to the full Boards taking up the matter.[388] This is one reason PG&E believes the Safety Expertise Criteria for SNO Committee members should be expanded. While PG&E does not favor formation of a safety subcommittee of the Executive Committees for the reasons stated above, if such a subcommittee nevertheless were formed, PG&E would have no objection to having it fulfill this function.

(d) Sunset Provision

Finally, PG&E understands the ACR's Board-related proposals to arise from PG&E's recent safety and operational issues. PG&E believes that, once it has put those issues behind it and demonstrated consistently strong safety and operational performance, such measures should sunset. Accordingly, PG&E proposes that, to the extent the foregoing Board governance provisions by their nature extend beyond the near term, they should expire upon the earliest of (1) five consecutive years in which PG&E has not entered the Enhanced Oversight and

[387] ACR § 5, App'x A at 6. PG&E understands "executive officers" to mean "executive officers" as defined in 17 C.F.R. § 240.3b-7. *See* Resolution E-4963 at 8 (Dec. 13, 2018) (construing "officer" in Public Utilities Code § 706 to refer to the officers encompassed by § 240.3b-7).

[388] The sequence matters, because a Board committee cannot veto an action of the full Board.

Enforcement Process (steps 3 and above); (2) if PG&E has entered and subsequently exited the Process, PG&E has remained out of the Process for two consecutive years; or (3) the Commission has approved a change in control.

* * *

In sum, there can be no serious question based on the evidentiary record in this proceeding that PG&E's Board-level "governance structure [is] acceptable" within the meaning of AB 1054—particularly with the augmentation PG&E is prepared to undertake in response to the ACR's proposals.[389] Indeed, no party's testimony appears to dispute this, but at most, some parties have made recommendations for incremental improvements. PG&E's Board-level governance structure should be deemed adequate for purposes of approving PG&E's Plan.

B. Utility Safety And Governance (Scoping Memo §§ 3.1, 3.2, 3.4)

AB 1054 provides that, for PG&E to participate in the Wildfire Fund, the Commission must approve PG&E's "reorganization plan and other documents resolving the insolvency proceeding, including [its] resulting governance structure as being acceptable in light of [its] safety history, criminal probation, recent financial condition, and other factors deemed relevant by the commission."[390] As a result, the Commission must determine whether to condition its approval of PG&E's Plan on PG&E's implementation of changes to its governance structure in order to satisfy AB 1054's standards.[391]

To assist the Commission in making this determination, PG&E has presented evidence regarding its existing and planned governance and operations. This evidence establishes a

[389] Pub. Util. Code § 3292(b)(1)(C).

[390] *Id.*

[391] *See, e.g.*, ACR, App'x A, at 1 ("Parties' supplemental testimony should address whether the Commission should condition its approval of PG&E's Plan and other documents resolving the insolvency proceeding on PG&E's implementation of any or all of these proposals for governance and operational reforms, as well as any substantive recommendations on the concepts.").

context for the Commission to evaluate whether additional changes are needed. As explained below, PG&E has implemented, and continues to implement, numerous enhancements in the areas of safety, risk, compliance, and customer care. This record demonstrates that the Utility's governance is "acceptable" under AB 1054 without imposition of additional requirements. Nevertheless, PG&E is prepared to adopt all of the ACR's proposals to further strengthen its governance and operations moving forward, though with some modifications.

This part of the brief first discusses PG&E's existing plans and actions to inform the Commission's determination as to whether the Utility's operational governance satisfies AB 1054, and then comments on the ACR's proposals relating to Utility governance and operations.

1. PG&E Has Numerous Programs And Initiatives To Promote Safety, Risk Management, Compliance, And Customer Care.

PG&E has undertaken numerous actions to improve its governance, safety culture, and performance, including enhancing risk and safety management, implementing comprehensive wildfire mitigation programs to address the growing threat of catastrophic wildfires, taking steps to improve its PSPS Program, and enhancing its compliance and ethics program. As further background, and illustration of its safety culture and efforts, PG&E describes its wildfire safety programs and PSPS Program in the below discussion. While this context is relevant background, PG&E believes the Commission is not required to take any actions, or make any particular findings, in this OII with respect to wildfire safety, PG&E's Wildfire Mitigation Plan, or PSPS operations.

(a) PG&E's Risk Management, Data, and Standards

PG&E has made important changes to its Enterprise and Operational Risk Management ("EORM") program in recent years, as detailed in the opening testimony of Stephen Cairns,

PG&E's Chief Risk Officer.[392] Across the enterprise, the EORM program quantitatively and systematically identifies, analyzes, evaluates, and monitors key risk drivers and mitigations for addressing those risks. PG&E's EORM program has aligned with the enterprise risk management regulatory processes established by the Commission in the Safety Model Assessment Proceeding ("SMAP") and the Risk Assessment and Mitigation Phase ("RAMP") proceeding.[393] As just one example of the modifications made to PG&E's EORM program in recent years, it has transitioned to an enterprise-wide event-based risk register, rather than viewing risk from the perspective of individual departments or lines of business. The EORM program is also focused on improving data collection and use as an important component for quantitative risk assessment.[394] Enhancement of PG&E's Enterprise Records and Information Management Program ("ERIM") is yet another action taken by PG&E to ensure that the timely, efficient, and accurate retrieval of information will support informed decision making.[395]

In an effort to ensure that PG&E is identifying potential risks and future developments (including unprecedented events that challenge past assumptions) to ensure it adequately plans for an ever-changing world, PG&E is also incorporating horizon scanning into its planning efforts.[396] Discussion with, and learning from, leaders in risk management from both inside and outside the industry (e.g., airlines) is also an element of PG&E's efforts to improve preparedness for potential future developments and assess potential mitigation techniques.[397]

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[392] PG&E-01 at 5-12 – 5-18 (opening testimony of Mr. Cairns).

[393] *Id.*

[394] *Id.*

[395] PG&E-01 at 5-31 – 5-33 (opening testimony of Ms. Hertzler).

[396] PG&E-01 at 5-22 – 5-23 (opening testimony of Mr. Vesey).

[397] *Id.*

To facilitate continual improvements in safety culture and performance, the Utility is also implementing across the enterprise its Enterprise Safety Management System ("ESMS"), which is designed to comprehensively manage the business of safety, and to address any gaps in safety management identified by NorthStar.[398] Another component of the Utility's safety management system is the adoption and implementation of internationally recognized asset management standards—Publicly Available Specification ("PAS") 55 and ISO 55000. Achieving these standards marks PG&E as exceptional in the industry, and provides a framework for the Utility to take a comprehensive view of how it manages assets in an effective and sustainable manner and to implement continuous improvement.[399]

(b) PG&E's Comprehensive Wildfire Safety Programs

PG&E is taking a comprehensive, multipronged approach to wildfire safety, which includes measures such as vegetation management, situational awareness technologies, system hardening, safety inspections, alternative technologies, its PSPS Program, and real-time monitoring in its Wildfire Safety Operations Center.[400] Notably, in 2019, the Utility exceeded its year-end goals of performing enhanced vegetation management work on 2,450 circuit miles in High Fire Threat Districts ("HFTD") and performing system hardening on 150 of its highest-risk miles.[401] The Utility also completed 100% of its accelerated safety inspections of nearly 50,000

[398] PG&E-01 at 5-18 – 5-19 (opening testimony of Mr. Vesey).

[399] PG&E-01 at 5-21 – 5-22 (opening testimony of Mr. Gupta).

[400] *See* PG&E-01 at 6-4 – 6-9 (opening testimony of Mr. Pender); *see also* PG&E's Amended 2019 Wildfire Safety Plan (Feb. 6, 2019), *available at* https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/Wildfire-Safety-Plan.pdf; PG&E's 2020 Wildfire Mitigation Plan Report, Updated (Feb. 28, 2020), *available at* https://www.pge.com/en_US/safety/emergency-preparedness/natural-disaster/wildfires/wildfire-mitigation-plan.page. The Utility's Wildfire Mitigation Plan is its submission pursuant to statutory requirements and direction provided by the Commission in its *Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018)*, R.18-10-007.

[401] *See* PG&E-01 at 6-4 – 6-7 (opening testimony of Mr. Pender).

transmission structures, nearly 700,000 distribution poles, and 222 substations in HFTD areas.[402] Moving forward, PG&E plans to build on its work and learnings from 2019 to further reduce wildfire risks, as described in greater detail in the Utility's 2020 Wildfire Mitigation Plan.[403]

Various intervenors have raised concerns (1) that the Utility stated in the federal proceeding relating to the criminal probation that it is unable to certify perfect compliance with all applicable vegetation management requirements,[404] and (2) that the Federal Monitor previously identified areas for improvement relating to the Utility's vegetation management work.[405] With respect to the first issue, PG&E's witnesses explained that it is not feasible for the Utility to certify perfect compliance with all applicable vegetation management requirements at any given time, because PG&E's service territory has millions of trees and is a dynamic, natural environment.[406] Moments after a tree crew trims a particular tree in compliance with applicable requirements, changes in the environment could bring a branch close to the power line and out of compliance, so the only way to certify perfect compliance would be "to actually have people posted at each tree day and night all the time."[407] Given these practical realities, the Utility has instead put in place processes and practices to meet its compliance obligations and ensure it

[402] *See id.* at 6-6.

[403] PG&E's 2020 Wildfire Mitigation Plan Report, Updated; *see* Mar. 2, 2020 Tr. at 993:6 – 996:14 (cross-examination testimony of Mr. Pender) (describing PG&E's continuous improvement with respect to wildfire safety); *id.* at 972:15-27 (cross-examination testimony of Ms. Powell) (referring to PG&E's 2020 Wildfire Mitigation Plan).

[404] *See United States v. Pacific Gas and Electric Co.*, No. 3:14-CR-00175-WHA, ECF 1132 (N.D. Cal. Jan. 15, 2020). The Wildfire Safety Division will evaluate utilities' compliance with their wildfire mitigation plans in a separate proceeding pursuant to Public Utilities Code section 8385 *et seq.*

[405] *See, e.g.*, Mar. 2, 2020 Tr. at 824:4-9, 832:17 – 833:18, 874:6 – 877:5 (cross-examination testimony of Ms. Kane by Ms. Kelly and Mr. Abrams); TURN-01 at 5 (reply testimony of Mr. Long).

[406] *See* Mar. 2, 2020 Tr. at 824:4 – 826:4 (cross-examination testimony of Ms. Kane); Feb. 27, 2020 Tr. at 498:1 – 499:12 (cross-examination testimony of Mr. Vesey).

[407] Mar. 2, 2020 Tr. at 824:4 – 826:4 (cross-examination testimony of Ms. Kane).

completes the work it has committed to do.[408] For example, the Utility has a robust vegetation management program, which includes inspection of every power line at least annually to maintain compliance with radial clearance regulations.[409] The Utility also has an Enhanced Vegetation Management ("EVM") Program, which goes "above and beyond" what is required by the regulatory requirements,[410] and which, "[t]o PG&E's knowledge, … is unprecedented in terms of its scope, scale, and pace of implementation."[411] The Utility's routine vegetation management work and EVM work undergo multistep processes that include layers of review to verify that the work has been completed in compliance with the applicable standards.[412]

With respect to the second issue raised by intervenors, the Federal Monitor prepared a letter that was filed with the court in August 2019 regarding his team's vegetation management field inspections.[413] In the letter, the Monitor preliminarily observed that the Utility's contractors had missed certain trees that should have been identified and worked under the applicable standards, and that the systems for tracking and assigning such work may have contributed to the missed work.[414] In response to the feedback from the Monitor and the Utility's own internal findings, the Utility implemented several measures to improve the quality of its vegetation management work and records management, including "enhanced training, added layers of quality review, additional personnel, steps to improve the accuracy of its

[408] *See id.* at 923:20 – 925:26, 933:2 – 935:6 (cross-examination testimony of Mr. Pender) (describing multistep vegetation management processes, including work verification and quality assurance).

[409] *Id.* at 933:2-27.

[410] *Id.* at 923:20 – 925:26; *see also id.* at 930:15-25, 933:28 – 935:6.

[411] PG&E-01 at 6-4 – 6-5 (opening testimony of Mr. Pender); *see also* Mar. 2, 2020 Tr. at 930:15 – 931:19, 933:28 – 935:6.

[412] *See* Mar. 2, 2020 Tr. at 923:20 – 925:26, 933:2 – 935:6 (cross-examination testimony of Mr. Pender); PG&E-01 at 6-5 (opening testimony of Mr. Pender).

[413] PG&E-01 at 8-18 (opening testimony of Ms. Kane); TURN-01-A, App'x K (Federal Monitor letter).

[414] PG&E-01 at 8-18 (opening testimony of Ms. Kane); TURN-01-A, App'x K (Federal Monitor letter).

mapping, and improvements related to the applications used for records management."[415] One of the measures the Utility implemented was to add a quality assurance step to the EVM process to randomly review circuit segments after the post-work verification team has completed its assessment.[416] Significantly, once the quality assurance review was established in the last quarter of 2019, it found that for approximately 98% of the sampled miles, all of the EVM work in those miles met the applicable standards, which was a significant improvement over the results of the first pass quality review.[417] Any trees that do not pass a quality review are sent back through the process for any necessary rework.[418]

(c) Improvements To PG&E's PSPS Program

PG&E is committed to reducing the scope and impacts of PSPS events and improving the execution of any necessary PSPS events going forward.[419] PG&E is focused on ensuring the safety of its customers and the communities it serves, and in certain conditions public safety is best served by implementing a PSPS event to mitigate the risk of catastrophic wildfires.[420] The PSPS events in fall 2019 achieved their singular purpose of preventing catastrophic wildfires during conditions of severe weather and high wildfire risk.[421] PG&E recognizes, however, that

[415] PG&E-01 at 6-5 – 6-6 (opening testimony of Mr. Pender); *id.* at 8-18 – 8-20 (opening testimony of Ms. Kane) (providing examples of the measures implemented); *see also* Mar. 2, 2020 Tr. at 834:13 – 835:9 (cross-examination testimony of Ms. Kane) (PG&E "took all of these findings extremely seriously" and took "a number of steps" to improve).

[416] PG&E-01 at 8-19 (opening testimony of Ms. Kane); *id.* at 6-5 (opening testimony of Mr. Pender); *see also* Mar. 2, 2020 Tr. at 923:20 – 926:15, 933:2 – 935:15 (cross-examination testimony of Mr. Pender).

[417] Mar. 2, 2020 Tr. at 923:20 – 926:15, 927:14-21, 933:2 – 935:15 (cross-examination testimony of Mr. Pender).

[418] *Id.* at 923:20 – 926:15, 929:14-28, 933:2 – 935:15.

[419] PG&E-01 at 6-2, 6-11 – 6-14 (opening testimony of Ms. Powell & Ms. Maratukulam); *id.* at 5-3, 5-34 – 5-35 (opening testimony of Mr. Vesey); *id.* at 4-32 – 4-33 (opening testimony of Ms. Brownell); *id.* at 1-1 – 1-2 (opening testimony of Mr. Johnson).

[420] *Id.* at 6-2, 6-7, 6-10 (opening testimony of Ms. Powell, Mr. Pender & Ms. Maratukulam); *id.* at 5-3, 5-34 – 5-35 (opening testimony of Mr. Vesey); *id.* at 4-32 (opening testimony of Ms. Brownell).

[421] *See id.* at 5-34 (opening testimony of Mr. Vesey).

there were lessons learned in the execution of the events, and that even a perfectly executed PSPS event creates significant disruptions and hardships for PG&E's customers.[422] After each PSPS event, the Utility conducts an After Action Review to consider internal and external feedback about the event, and PG&E also has been engaged in a system-wide listening tour with stakeholders in the affected cities and counties to solicit feedback and learn about their local needs.[423] The Utility already is undertaking numerous efforts to further enhance its PSPS Program,[424] including with respect to areas for improvement identified by intervenors in this proceeding.[425] In addition, the Utility's 2020 Wildfire Mitigation Plan sets forth additional measures to make any future PSPS events smaller in scope, shorter in duration, smarter in performance, and less burdensome on affected communities.[426] Further, PG&E is making safety

[422] *Id.* at 6-2, 6-10, 6-13 – 6-14 (opening testimony of Ms. Powell & Ms. Maratukulam); *id.* at 5-3, 5-34 – 5-35 (opening testimony of Mr. Vesey) ("[T]he Utility understands that PSPS are highly disruptive to its customers….The Utility recognizes that it did not execute the recent PSPS events flawlessly, though execution improved substantially between PSPS events in a short timeframe…."); *id.* at 1-1 – 1-2 (opening testimony of Mr. Johnson) ("We understand that our implementation of PSPS was unacceptable."); Feb. 28, 2020 Tr. at 723:8 – 724:10 (cross-examination testimony of Ms. Brownell) (accepting Mr. Long's characterization of the October 2019 PSPS events as "poorly executed").

[423] Feb. 27, 2020 Tr. at 404:13 – 406:9, 415:13 – 416:13 (cross-examination testimony of Mr. Vesey); Mar. 2, 2020 Tr. at 969:5-23 (cross-examination testimony of Ms. Maratukulam).

[424] *See, e.g.*, PG&E-01 at 6-2, 6-11 – 6-14 (opening testimony of Ms. Powell & Ms. Maratukulam) (providing examples of the Utility's significant efforts to further enhance its PSPS Program, including with respect to limiting the number of customers impacted, promoting coordination with external partners, and mitigating the impacts on customers); *id.* at 5-35 (opening testimony of Mr. Vesey); Mar. 2, 2020 Tr. at 1005:15 – 1006:21 (cross-examination testimony of Ms. Maratukulam & Mr. Pender) (describing efforts to secure additional, hardened Community Resource Center facilities in 2020); Feb. 26, 2020 Tr. at 157:24 – 158:21 (cross-examination testimony of Mr. Johnson); *see also* Pacific Gas & Electric Company's Response to OII, *Order Instituting Investigation on the Commission's Own Motion on the Late 2019 Public Safety Power Shutoff Events*, I.19-11-013 (December 13, 2019) (discussing the Utility's efforts in greater detail).

[425] *See, e.g.*, CLECA-01 at 8 (reply testimony of Ms. Yap); JCCA-01 at 16 (reply testimony of Mr. Beach); TURN-01 at 6 (reply testimony of Mr. Long).

[426] *See* PG&E's 2020 Wildfire Mitigation Plan Report, Updated; *see also* Mar. 2, 2020 Tr. at 944:26 – 945:22 ("[W]e are working now to stand up those improvements so that in execution in 2020 going forward we will be better, smarter, and faster."); PG&E-01 at 6-13 – 6-14 (opening testimony of Ms. Maratukulam).

and governance commitments in this proceeding, which will further support its mission of delivering safe, reliable, affordable, and clean energy to its customers.[427]

PG&E "does not take the decision to de-energize lightly."[428] The Utility's decision-making around potential PSPS events follows clearly delineated processes and protocols, and takes into account various information, including real-time weather data, field observations, and information regarding the potential impacts of de-energization.[429] The Utility is intensely focused on reducing the scope, frequency, and duration of PSPS events.[430] In 2020, the Utility aims to substantially reduce the number of customers affected by PSPS events and cut the restoration time after PSPS-inducing weather has cleared, through efforts such as enhanced weather data, additional sectionalizing devices, field team pre-positioning, microgrids, and other activities.[431] The Utility's efforts to improve its PSPS Program are discussed in greater detail in its 2020 Wildfire Mitigation Plan[432] and in other proceedings before the Commission relating to de-energization.[433]

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[427] *See generally* Sections IV.A – C (discussing PG&E's safety and governance commitments).

[428] PG&E-01 at 6-10 (opening testimony of Ms. Maratukulam); *see id.* at 5-34 – 5-35 (opening testimony of Mr. Vesey); *see also* Pacific Gas & Electric Company's Response to OII I.19-11-013, at 1 – 2.

[429] PG&E-01 at 6-10 – 6-11 (opening testimony of Ms. Maratukulam) (citing *The Science and Decision-Making Around Public Safety Power Shutoffs*, https://players.brightcove.net/3399141204001/default_default/index.html?videoId=6117130015001); Mar. 2, 2020 Tr. at 898:20 – 899:23, 900:25 – 901:8, 984:1 – 985:25 (cross-examination testimony of Ms. Maratukulam).

[430] *See* PG&E-01 at 5-11, 5-34 – 5-35 (opening testimony of Mr. Vesey); *id.* at 6-11 – 6-14 (opening testimony of Ms. Maratukulam).

[431] *Id.* at 6-13; PG&E's 2020 Wildfire Mitigation Plan, Updated.

[432] PG&E's 2020 Wildfire Mitigation Plan Report, Updated; *see* Mar. 2, 2020 Tr. at 993:6 – 996:14 (cross-examination testimony of Mr. Pender).

[433] *See, e.g.*, *Order Instituting Investigation on the Commission's Own Motion on the Late 2019 Public Safety Power Shutoff Events*, I.19-11-013; *Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions*, R.18-12-005; *Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018)*, R.18-10-007.

(d) PG&E's Compliance And Ethics Program, And Compliance With Probation

In recent years, PG&E has rebuilt its enterprise-wide Compliance and Ethics Program consistent with the recommendations set forth in Section 8B2.1 of the U.S. Sentencing Guidelines, including with respect to an effective governance structure, standards and procedures, training and communications, auditing and monitoring, reporting mechanisms, and investigation and discipline as appropriate.[434] For example, in 2015, PG&E created the executive-level position of Chief Ethics and Compliance Officer ("CECO") as part of its commitment to build a best-in-class ethics and compliance program.[435] The CECO reports directly to the CEO of PG&E Corporation and regularly reports to the Boards and Board Committees.[436] PG&E also has substantially increased senior management-level and Board-level oversight of its Compliance and Ethics Program and expanded its compliance and ethics team.[437] PG&E's senior leadership convenes annually at a meeting referred to as "Session D" to review and assess the companies' risk and compliance issues, and PG&E has a standardized Compliance and Ethics Maturity Model to assess the effectiveness of each line of business's compliance program.[438]

PG&E's Codes of Conduct set forth the Company's conduct standards and policies, explain how employees can report compliance and ethics issues, emphasize the importance of speaking up about potential issues, and describe PG&E's strong non-retaliation policy.[439]

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[434] *See* PG&E-01 at 8-12 – 8-17 (opening testimony of Ms. Kane); Mar. 2, 2020 Tr. at 838:17 – 840:1 (cross-examination testimony of Ms. Kane).

[435] PG&E-01 at 8-2, 8-12 (opening testimony of Ms. Kane).

[436] *Id.*

[437] *Id*. at 8-12 – 8-13.

[438] *Id.* at 8-13 – 8-14.

[439] *Id.* at 8-14.

PG&E's Compliance and Ethics Department leads enterprise-wide trainings on the Codes of Conduct and compliance and ethics more broadly, which also emphasize the importance of speaking up and non-retaliation.[440] In addition, PG&E makes numerous strategic communications to promote compliance and ethics.[441] For example, PG&E holds an annual, all-employee Compliance and Ethics Week, which includes trainings, activities, and guest presentations, and presents an annual Speak Up Award Program, during which senior leaders honor employees who have spoken up about a potential issue or concern.[442]

PG&E has several programs that promote meaningful conversations across the company about compliance and ethics issues, including its Reach Every Employee Program and PG&E Ethics Council.[443] In addition, PG&E has several mechanisms for people to report or seek guidance on compliance issues, such as its 24-hour Compliance and Ethics Helpline, its Corrective Action Program, and the Monitor Helpline established by the Federal Monitor.[444] Further, in 2016, PG&E's Compliance and Ethics Department partnered with a third-party expert and key internal stakeholders to redesign its investigations and reporting processes based on the Sentencing Guidelines recommendations.[445]

TURN and William B. Abrams have raised concerns regarding PG&E's past Locate and Mark practices, which were addressed in I.18-12-007.[446] PG&E has taken responsibility for the

[440] *Id.* at 8-15.

[441] *Id.* at 8-15 – 8-16.

[442] *Id*.

[443] *Id.* at 8-16 – 8-17.

[444] *Id.*

[445] *Id.* at 8-17.

[446] *See, e.g.*, TURN-01 at 5, 20-22 (reply testimony of Mr. Long); Mar. 2, 2020 Tr. at 812:7 – 823:10 (cross-examination testimony of Ms. Kane by Mr. Long); *id.* at 852:20 – 855:15 (cross-examination testimony of Ms. Kane by Mr. Abrams).

shortcomings with respect to this matter and has been undertaking significant remedial measures to strengthen its processes and culture, as discussed in more detail in I.18-12-007.[447] For example, PG&E has improved its technology and training in connection with its Locate and Mark Program and has incorporated lessons learned from the Locate and Mark matter into PG&E's compliance and ethics trainings.[448] Also, a top priority of PG&E's Compliance and Ethics Program is encouraging people to "Speak Up, Listen Up, and Follow Up," and the Program continues to improve in this area through governance, training, communications, and other efforts.[449]

Section 3.2 of the Scoping Memo directs the parties to address how the Utility's criminal probation may relate to or impact the resolution of issues in this proceeding.[450] As explained in Julie Kane's testimony, PG&E's governance structure is and will remain consistent with the terms of the Utility's probation.[451] PG&E's Plan does not propose any changes to PG&E's corporate governance or structure that could implicate the Utility's probation, and PG&E intends that the Reorganized Utility will continue with its extensive efforts to fully comply with the

[447] Mar. 2, 2020 Tr. at 821:11 – 823:8, 852:20 – 855:15 (cross-examination testimony of Ms. Kane).

[448] *See id.* at 852:20 – 855:15.

[449] *Id.* at 840:7-24, 852:20 – 855:15; PG&E-01 at 8-14 – 8-17 (opening testimony of Ms. Kane). During cross-examination testimony of Ms. Kane, Mr. Abrams expressed dismay that Ms. Kane as the Chief Ethics and Compliance Officer, had not reviewed PG&E's Plan to determine if it was ethical. (Mar. 2, 2020 Tr. at 885:8-10 (cross-examination testimony of Ms. Kane by Mr. Abrams); *see also* Mar. 3, 2020 Tr. at 1123:18 – 1126:17 (cross-examination testimony of Mr. Kenney by Mr. Abrams).) However, the appropriate governance function of an ethics and compliance officer is to implement and oversee a properly functioning ethics and compliance program, which includes training executives and employees on their obligations and ensuring a culture where issues are raised and addressed. (*See* PG&E-01 at 8-2 (opening testimony of Ms. Kane) ("As Chief Ethics and Compliance Officer, I oversee and monitor the companywide Compliance and Ethics Program and lead ethics and compliance training and culture-building efforts.").) It was not within Ms. Kane's role to evaluate whether the Plan—which embodies settlements with the key constituencies, including the Tort Claimants Committee and professionals representing a substantial majority of holders of Wildfire Claims—is a fair resolution of the parties' claims.

[450] Scoping Memo at 5.

[451] PG&E-01 at 8-2, 8-21 – 8-23 (opening testimony of Ms. Kane).

terms of the probation and the monitorship.[452] The Utility already has timely completed several requirements of the probation, including payment of the monetary penalties, satisfaction of the community service obligations, publicizing the conviction through an advertising campaign, and having the Utility's Board and senior leaders tour the Paradise and San Bruno communities and speak with victims and other stakeholders.[453] In addition, the Utility has been fully cooperating with the Monitor's numerous oversight activities—which have included more than 1,000 meetings and site visits and thousands of requests for information—and has been working closely and constructively with the Monitor.[454] The Utility also is working to comply with the ongoing probation conditions, such as those related to maintaining an effective compliance and ethics program, having a Board committee track and report on the Utility's progress with respect to certain conditions, and meeting requirements related to the Utility's wildfire safety work.[455]

2. PG&E Supports The ACR's Proposals Regarding Utility Governance And Operations, With Some Proposed Modifications.

(a) The Utility's Chief Safety Officer And Chief Risk Officer Will Drive Improvements To Safety Culture And Performance. (ACR § 1)

The Utility is enhancing its focus on safety by, among other things, appointing a Chief Safety Officer with public safety expressly under his purview, and elevating and focusing the Chief Risk Officer position.[456] For both of these positions, a direct reporting line to the CEO of

[452] *Id.* As noted in Ms. Kane's testimony, if the Commission were to require significant changes to PG&E's corporate governance or structure, certain conditions of probation could be implicated. *Id.*

[453] *See id.* at 8-10 – 8-11.

[454] *Id.* at 8-2, 8-9 – 8-10, 8-18.

[455] *See id.* at 8-8, 8-11 – 8-21.

[456] Feb. 26, 2020 Tr. at 349:5-11 (cross-examination testimony of Mr. Vesey) ("If you think about the two roles, the chief safety officer literally is a technician who helps manage the risks around safety, both currently in the work force, but going forward, also work force and public safety."). PG&E also is considering removing the CRO's responsibility for Internal Audit, in order to give the position a singular focus on risk. *See id.* at 336:12-23 (cross-examination testimony of Mr. Vesey) ("Currently the chief risk officer also has responsibility for internal audit. It's intentioned that on emergence, the chief risk officer

the Corporation will elevate the visibility and importance of the positions, and ensure they are adequately resourced.[457] As described by Mr. Vesey, having the CRO as "an individual with a singular focus on risk governance, meaning standards, processes, procedures, how you understand and provide an independent review to the corporation's CEO, to the board … is very important"; "when you're dealing with these major risks, having that independent pathway of communication to the corporate CEO over the operating company is appropriate."[458] The CRO and CSO will work closely together: "The mechanisms, how we think about risk, how we quantify it, how we measure it, how do we assure there are mitigations, these are the procedures and processes that a chief risk officer would lay out. … The chief safety officer fundamentally is working on mitigation strategies and prevention. … The chief safety officer deals with helping to identify the risks around work force and public safety and then actually executes the programs to mitigate those."[459] Consistent with its opening testimony and that provided at the hearing, PG&E supports the ACR's proposals with respect to the roles of the CRO and CSO post-emergence, with a handful of proposed changes.

CSO And Public Safety. PG&E agrees that, "[i]n addition to a focus on workplace safety, the roles and responsibilities of the CSO should also incorporate public safety as relevant in each component."[460]

Direct Line Of Reporting From Regional Lead Safety Personnel To CSO. PG&E supports the recommendation that the CSO have a direct line of reporting from lead safety personnel and regular contact with employees and contractors in the field within each region of

reporting to the CEO will solely be focused. His entire focus will be as chief risk officer, so it's a single-focused position.").
[457] *See, e.g.,* PG&E-01 at 5-7 (opening testimony of Mr. Vesey); Feb. 26, 2020 Tr. at 347:4-18 (cross-examination testimony of Mr. Vesey).
[458] Feb. 26, 2020 Tr. at 338:23 – 340:18, 347:4-18 (cross-examination testimony of Mr. Vesey).
[459] Feb. 26, 2020 Tr. at 349:5 – 350:9 (cross-examination testimony of Mr. Vesey).
[460] ACR § 1, App'x A at 3.

PG&E's service territory in its anticipated regionalization plan.[461] PG&E wishes to clarify that each anticipated region's lead safety personnel, while generically referred to as a "safety officer," would not be an executive level position, but rather would be equivalent to a director or senior director level position.

PG&E likewise supports the CRO having regular contact with employees and contractors in the field within each region of PG&E's service territory. To the extent the ACR proposes that the lead safety personnel in each region have a direct line of reporting to *both* the CSO and the CRO, PG&E believes that such dual reporting lines would be ineffective, confusing, and not a sound practice. Risk evaluation is better approached from an enterprise and line of business perspective than via localized regions. The safety efforts to address those risks, on the other hand, can logically involve regional leadership.

Thus, in lieu of a direct reporting line, PG&E proposes instead that the CRO maintain regular contact with the lead safety personnel in each region. This regular contact could be supplemented by a standing committee between the Chair of the Utility SNO Committee, the CEO of the Utility and the CEO of the Corporation, and the CSO and CRO to ensure alignment and communication.

Quarterly CPUC Meetings With CRO. PG&E welcomes the opportunity for the CRO to "appear before the Commission or meet with Commission staff at least quarterly."[462]

Semiannual Performance Reports By CSO. PG&E supports having the CSO "provide semi-annual performance reports to the Commission staff on metrics relating to public safety."[463] PG&E agrees that these performance reports would appropriately relate to Safety and

[461] *Id.*

[462] ACR § 1, App'x A at 3.

[463] ACR § 1, App'x A at 3.

Operational Metrics relating to public safety, and include, where metrics are not met, mitigation plans approved by the CSO and an Independent Safety Advisor.[464]

Appointments Of CRO And CSO. PG&E agrees that the initial CRO and CSO will be in place no later than the Effective Date.[465] The initial CSO has already been appointed and started effective March 9, 2020, such that the proposed consultation or approval process with the State and CPUC staff in the ACR is inapplicable. The selection of the CSO was the result of "a worldwide search," and garnered an individual from outside the industry with "a whole new perspective and new mandate and charge," and the ability "to rethink the way we approach not only workforce safety, but public safety, as well."[466]

With respect to the initial CRO, PG&E opposes a public process to review candidates, and likewise PG&E opposes making the appointment subject to approval by the Commission staff. Through the regular meetings and reporting, the Commission will be in a position to assess the performance of PG&E's senior leaders, including its CRO and CSO. If such senior leaders lose the confidence of the Commission, PG&E will hold those leaders accountable. Maintaining clear roles between the Utility, as operator, and the Commission, as regulator, promotes organizational learning and accountability. PG&E supports having any subsequent replacement of the CSO or CRO be approved by a majority of the members of the SNO Committees.[467] PG&E would, however, ensure that the initial CRO is acceptable to the Governor's Office. PG&E further commits that any individual appointed to the position of CRO after the initial appointment shall be approved by a majority of the members of the SNO Committees (or, if the Commission decides that a safety subcommittee of the Executive Committee should be convened

[464] *See infra* Part IV.B.2.c.ii (Proposal for Safety and Operational Metrics).

[465] ACR § 1, App'x A at 3.

[466] Feb. 27, 2020 Tr. at 445 (cross-examination testimony of Mr. Vesey).

[467] ACR § 1, App'x A at 3.

and undertake that role, by a majority of the members of that subcommittee). PG&E accepts the ACR's proposal that the CRO and CSO positions "remain in place unless the Commission determines they are no longer necessary based on safety and operational history."[468]

(b) Regional Restructuring Will Improve The Customer Experience. (ACR § 6)

As discussed in Mr. Vesey's opening testimony, a shift to regionalized operations will bring operational management closer to PG&E's customers, improve responsiveness, and improve the level of informed, localized service for customers.[469] PG&E embraces many of the ACR's proposals with respect to the mechanics of implementing the regionalization concept, and provides additional comment relating to this topic below.

Application For Regional Restructuring Plan. PG&E supports the creation of "local operating regions to bring management closer to the customers they serve."[470] The ACR has proposed that PG&E file an application seeking approval of a proposed regional restructuring plan by June 30, 2020, a timeline which PG&E believes it can meet with respect to defining the proposed regions, governance structure, and division of responsibilities between localized operations and centralized operations.

Consistent with the ACR's recommendations that PG&E take interim steps towards regionalization while its application remains pending, PG&E intends to appoint region-specific officers and personnel.

However, in light of the wildfire season, "between June and the end of November [PG&E] would be hesitant to be doing anything that could be disruptive to the organization."[471]

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[468] *Id.*

[469] PG&E-01 at 5-35 – 5-36 (opening testimony of Mr. Vesey).

[470] ACR § 6, App'x A at 7.

[471] Feb. 27, 2020 Tr. at 504:3-6 (re-cross-examination testimony of Mr. Vesey).

Accordingly, PG&E anticipates that it will begin the process of implementing interim steps towards regionalization in Q1 2021. During cross-examination, counsel for CLECA pursued lines of questioning suggesting that PG&E should seek additional time to "develop a complete and detailed regional restructuring plan in time for inclusion in the next General Rate Case Phase 1 filing, which is the summer of 2021."[472] PG&E anticipates that by June 2021 it will have engaged with the Commission regarding its regionalization strategy, and have taken interim steps towards regionalization as recommended by the ACR, including the appointment of regional officers, which of course necessitates that PG&E will also have divided its service territory into the regions proposed in its application.

Regional Officers And Regional Lead Safety Personnel. PG&E supports the recommendation that, as an interim step towards regional restructuring while PG&E's application remains pending, PG&E appoint regional officers to manage each region proposed in the application who are executive officer positions who report directly to the Utility CEO.[473] PG&E also supports each region having a lead safety personnel, and making that appointment as an interim step while the application remains pending; as discussed, this position may generically be referred to as a "safety officer," but would be a director or senior director level position and not an executive level officer.[474] The lead safety personnel from all regions would report to the CSO. As discussed above, in light of the 2020 wildfire season starting just as PG&E will be filing its application, PG&E anticipates that it will be in a position to implement the division of its service territory into regions and appoint regional officers and lead safety personnel by June 2021.

[472] Feb. 27, 2020 Tr. at 396-97 (cross-examination testimony of Mr. Vesey).
[473] ACR § 6, App'x A at 7.
[474] *Id.*

Regional Risk Officers. PG&E opposes the suggestion to appoint a "risk officer" (or lead risk personnel) in each region to report to the CRO. There are already risk owners within each line of business with subject matter expertise whom the CRO works with closely in implementing the processes and structure for identifying risks, quantifying those risks, and identifying mitigants. As Mr. Vesey explained, "we do have risk officers in the company. They're not called risk officers, but the senior vice president of electric ops is deploying financial and human resources to ensure that the continuity of power deals with all the risks around those assets"; "[t]he head of electric operations deals with electrical operations risks. The head of gas deals with gas risks. That's what they do. They program against risks."[475] The CRO establishes a set of procedures and processes to identify and measure risk which are consistent across the enterprise, and will work closely with the risk owners with subject matter expertise within each line of business. Adding an extra layer of management between the CRO and these risk owners by appointing region-specific risk personnel will detract from the CRO's ability to ensure consistency across the enterprise regarding the process for evaluating risk, and at best is a redundancy that is unnecessary in light of the CRO's centralized function.

(c) PG&E Is Embracing Independent Oversight. (ACR §§ 2, 7)

PG&E has embraced the view of outside experts regarding improvements to its safety culture and performance, as demonstrated by its collaboration with the Federal Monitor, work with NorthStar Consulting Group, and adoption of an ISOC. Moreover, PG&E is committed to maintaining an Independent Safety Advisor, akin to the ISOC, after the Federal Monitorship ends, and developing Safety and Operational Metrics to enable the Independent Safety Advisor and the Commission to monitor PG&E's progress.

[475] Feb. 26, 2020 Tr. at 350:11 – 352:20 (cross-examination testimony of Mr. Vesey).

(i) PG&E Has Welcomed Outside Perspectives To Improve Its Safety Culture And Performance.

As discussed in the opening testimony of Ms. Brownell and Mr. Vesey, PG&E has created an ISOC, modeled on independent safety oversight committees that have been established and used with success in the areas of nuclear power and dam operations.[476] The ISOC is chaired by Christopher Hart, an individual with extensive administrative experience overseeing complex, hazardous industries to ensure they operate safely, including in his past role as Chair of the National Transportation Safety Board. The remaining ISOC members likewise have relevant and diverse safety and operational expertise. The ISOC members' initial field visits, interviews, observations of meetings, and reviews of safety performance documentation in December 2019 centered on processes and programs relating to wildfire safety.

While the ISOC's initial focus is on wildfire safety, moving forward in 2020, the ISOC will scale its scope of review such that every aspect of the business will have independent safety oversight. The ISOC will prepare reports with their findings, to be disseminated to Utility leaders and the Boards of Directors and relevant Board committees, such as the SNO.

The review by NorthStar, the independent consultant engaged by the Commission, of the Utility's safety culture and performance is ongoing. To date PG&E has embraced every single recommendation set forth in the report prepared by NorthStar at the direction of the Commission's SED. The Utility submits quarterly reports to the SED on the status of its implementation, including updates on the Utility's progress in addressing observations made by NorthStar in its March 2019 First Update Report.[477]

[476] PG&E-01 at 4-25 (opening testimony of Ms. Brownell), 5-23 – 5-25 (opening testimony of Mr. Vesey).
[477] PG&E-01 at 5-25 – 5-26 (opening testimony of Mr. Vesey).

In short, PG&E has welcomed, and indeed voluntarily invited, outside perspectives to improve its safety culture and performance, and it anticipates continuing to do so in the future.

(ii) PG&E Supports A Post-Monitor Independent Safety Advisor And Use Of Safety And Operational Metrics. (ACR §§ 2, 7)

PG&E demonstrated its embrace of independent safety oversight by proposing in its opening testimony the institution of an Independent Safety Advisor position effective upon the termination of the Federal Monitor. PG&E proposed that, when the Federal Monitor position was nearing an end, it would evaluate its experience with the ISOC and at that point evaluate whether the Independent Safety Advisor position should be an evolution from the ISOC or instead be structured as a more external role akin to the Monitor model.[478] As described in the opening testimony of Mr. Vesey, the Independent Safety Advisor would be an expert who would review PG&E's compliance and progress with respect to operations and disaster mitigation activities, such as reliability and hardening programs, risk analysis, public and workforce safety, vegetation management programs, and programs to assure compliance with safety and operational metrics. As with the current ISOC, the Independent Safety Advisor would conduct field visits, interviews, and inspections, review documentation related to safety performance. The Independent Safety Advisor would work with the CSO, the CRO, and PG&E's management team to develop recommendations to address compliance issues and enhance PG&E's safety performance, and would provide no less than quarterly reporting to the SNO Committees, the Commission, and the CSO and CRO regarding its findings and status of any remedial actions to address any deficiencies previously identified.[479] This reporting is integral to PG&E's proposal that it work with the Commission to design and implement a program for regular Commission oversight of

[478] PG&E-01 at 5-28 (opening testimony of Mr. Vesey).
[479] *Id.*

PG&E's safety and operational performance, and that PG&E submit to the Commission a set of proposed safety and operational metrics for the Commission's review and approval.[480] In line with its opening testimony, PG&E supports the ACR's proposal with respect to the appointment of an Independent Safety Advisor and the use of Safety and Operational Metrics. PG&E recommends that the Commission define the role of the Independent Safety Advisor now, but that it consider PG&E greater experience with the ISOC and determine whether any modifications to that role would be appropriate when the time comes to appoint an Independent Safety Advisor.

Appointment Of Independent Safety Advisor. PG&E supports the appointment of an Independent Safety Advisor after the termination of the Federal Monitor, and supports having the Independent Safety Advisor work with the CRO, CSO, and PG&E's management team and Board to develop recommendations to address compliance issues and enhance PG&E's safety performance.[481] PG&E commits that the identity of the Independent Safety Advisor would be approved by a majority of the members of the SNO Committee (or, if the Commission decides that a safety subcommittee of the Executive Committee should be convened and undertake that role, by a majority of the members of that subcommittee). These commitments will be memorialized in the Plan Supplement or other documents filed with the Bankruptcy Court.

Function Of Independent Safety Advisor. Rather than dictating, at this point, that the Independent Safety Advisor will functionally serve in the same capacity as the Federal Monitor, PG&E recommends that the Commission evaluate the precise function of the Independent Safety Advisor in the future, based on PG&E's experience with the current Federal Monitor and the ISOC. Accordingly, PG&E suggests that the Commission authorize PG&E to file an advice

[480] *Id.* at 5-30.
[481] ACR § 2, App'x A at 3-4.

letter four months prior to the end of the Federal Monitorship proposing the function of the Independent Safety Advisor.

Retention Of Third-Party Advisors By Independent Safety Advisor. PG&E supports the Independent Safety Advisor having the authority to retain third-party advisors. In addition, the Commission should establish a process to ensure that the cost of the Independent Safety Advisor is reasonable. PG&E recommends a process in which the Utility would annually submit to the Commission an advice letter laying out a proposed scope of work for the Independent Safety Advisor, and the Utility would issue a request for proposals to perform the scope of work (with any modifications the Commission staff may direct) including a budget. The Utility would select a winning bidder and submit its selection, and the associated budget, to the Commission through an advice letter. The Utility's contract with the Independent Safety Advisor would provide that the Independent Safety Advisor shall not bill amounts in excess of the budget approved by the Commission, and the Utility may request that the Commission authorize recovery in rates of the costs and expenses of the Independent Safety Advisor within the approved budget.

Term For Independent Safety Advisor. While the ARC is silent on the length of time the Independent Safety Advisor would remain in place following the termination of the Federal Monitor, PG&E recommends that the Independent Safety Advisor would sunset after 2025 unless the Commission extends that date.

Proposal For Safety And Operational Metrics. PG&E supports having a Commission proceeding in which PG&E would propose Safety and Operational Metrics which would be reasonably achievable and designed to accomplish the transformational goals of the state of California. PG&E agrees the Commission may use the approved Safety and Operational Metrics to measure PG&E's progress on critical safety issues.

The purpose of the Safety and Operational Metrics is to ensure that PG&E's performance does not fall below the minimum acceptable state, and to initiate the Enhanced Oversight and Enforcement Process, including corrective action plans, if it does. Given this goal, the Safety and Operational Metrics should not be established in the same manner as other metrics that serve different purposes. For example, executive compensation metrics are designed to incentivize management to stretch for higher levels of achievement; incentive payment should not be awarded simply because performance hovers barely above the minimally acceptable level.[482] The metrics in the Wildfire Mitigation Plans and RAMP, as further examples, also serve different purposes. As such, developing the Safety and Operational Metrics will require significant internal evaluation and careful consideration by the Commission and stakeholders to ensure that they serve their intended purpose and that they are compatible with other metrics adopted for other purposes.

PG&E agrees the Safety and Operational Metrics should be consistent with state law, reasonably achievable, and include metrics that measure progress over defined periods. Specifically, given the likely variability in results from quarter to quarter, PG&E recommends that its performance relative to the adopted Safety and Operational Metrics be measured on an annual basis. PG&E agrees that the Safety and Operational Metrics should consider, among other things, the bullet-pointed metrics listed in the ACR.[483] As the purpose of the Safety and Operational Metrics would be to measure PG&E's future progress, PG&E understands, and would request confirmation, that the adopted Safety and Operational Metrics would measure PG&E's performance after the Effective Date, and would not be applied to PG&E's actions before that date.

[482] *Cf.* TURN-01 at 29-30, 35-36 (reply testimony of Mr. Long).

[483] ACR § 7, App'x A at 8.

Given the importance and complexity of defining the Safety and Operational Metrics, PG&E further understands that Commission approval of such metrics would occur after June 30, 2020, and that such approval is not required for the Commission to approve PG&E's Plan under Section 3292. Additionally, the Safety and Operational Metrics, once approved by the Commission, should be subject to revision over time as appropriate with Commission approval.

(d) PG&E Supports The Establishment Of An Enhanced Oversight And Enforcement Process. (ACR § 10)

PG&E has expressed an intention "to work with the Commission to construct a process for early identification of shortcomings and prompt implementation of corrective actions, which will serve as an early stage of potentially escalating Commission enforcement."[484] The ACR proposes that "[t]he Commission should establish an Enhanced Oversight and Enforcement Process (Process) designed to provide a clear roadmap for how the Commission will closely monitor PG&E's performance in delivering safe, reliable, affordable, clean energy."[485]

PG&E supports the Commission establishing an Enhanced Oversight and Enforcement Process. PG&E agrees that it would enter the Process upon the occurrence of defined triggering events, including the failure to comply with the Safety and Operational Metrics (assuming they are reasonably achievable), and that it would move into higher steps of the Process, with greater enforcement mechanisms, if past triggering events were not sufficiently addressed through a corrective action plan or if more severe triggering events occurred.

PG&E recommends certain modifications to the ACR's proposal regarding the Process, of which the two most critical are the time intervals between steps above Step 3, and the role of the Commission relative to the Executive Director.

[484] PG&E-01 at 1-16 (opening testimony of Mr. Johnson).

[485] ACR § 10, App'x A at 10.

Reasonable Minimum Time Between Steps. PG&E recommends that, in the Enhanced Enforcement stage of the Process, there should be a minimum time period of 12 months between steps, such that PG&E cannot be moved above Step 3 in the Process based on a failure to implement a corrective action plan before it has had at least 12 months to implement the required corrective actions and the Commission would have a meaningful opportunity to evaluate progress under the corrective action plan. Except with regard to two of the three triggering events for Step 6, the Process proposed in the ACR does not include such minimum time periods.[486] Without them, PG&E might be moved through the higher steps of the Process, up to and including the review of PG&E's CPCN, in a relatively short period of time.

The lack of minimum periods is problematic for multiple reasons. The Process should be designed to allow PG&E to address safety and compliance issues through the implementation of a corrective action plan. An accelerated progression through the Process may not allow PG&E sufficient time to implement the necessary corrective actions. This concern is acute at the higher steps of the Process, as the circumstances that lead to the initiation of those steps may also require changes to management. In those circumstances in particular, the company should be given at least 12 months to succeed.

Establishing reasonable minimum time periods between steps in the Enhanced Enforcement portion of the Process is also important to maintaining PG&E's access to capital, which allows PG&E to make needed investments. As described by Mr. Wells, a lack of certainty about the timing of the Enhanced Enforcement process will lead financial market participants to operate under the assumption that PG&E may be moved rapidly through escalating enforcement

[486] ACR § 10, App'x A at 13-17. The other triggering event for Step 6 – that the Commission's request for a receiver pursuant to Step 5 has been denied – provides no minimum time period before it may occur. *See id.* at 17. Thus, PG&E could be moved directly from Step 4 to Step 6 with no time in between. For that reason, among others, PG&E opposes the ACR proposal to include the denial of a receiver as a triggering event for Step 6.

actions.[487] This assumption will increase the perceived risk of investing in PG&E, with the result that PG&E will find it more difficult to access capital.[488] Likewise, the prospect of accelerated enforcement actions will impact ratings agencies' qualitative views of PG&E's regulatory environment, depressing PG&E's credit rating and leading to a higher cost of debt.[489] Accordingly, to further the ultimate goal of ensuring safe and reliable service, PG&E recommends adding a minimum time period of 12 months between the steps in the Enhanced Enforcement stage of the Process.

Delegation To The Executive Director. PG&E opposes the proposal to delegate to the Commission's Executive Director the authority to make the sensitive and important decision whether to move PG&E into and through the Enhanced Enforcement stage of the Process. Under the ACR Proposal, the Executive Director would have the authority to determine whether to move PG&E from a lower step to Steps 3 and 4 of the Process.[490] This aspect of the proposal reinforces the concerns about the absence of minimum time periods between the steps in the Enhanced Enforcement stage of the Process, as the Executive Director could exercise discretion to move PG&E through Steps 3 and 4 quickly, without due process and without Commission action.

Initiating Steps 3 and 4 of the Process are among the most serious and important actions the Commission can take. The power to regulate utilities and take action to enforce the Commission's rules is vested in the Commission itself by the California Constitution and Public

[487] Wells Decl. ¶ 5.

[488] *Id.* ¶ 7.

[489] *Id.* ¶¶ 8-11.

[490] ACR § 10, App'x A at 10-16.

Utilities Code.[491] As a matter of policy and principle, the Commission should make the judgments about whether to appoint a monitor or chief restructuring officer, which touch on the Commission's fundamental regulatory responsibility and implicate momentous issues of public interest. The Commission has the responsibility, and should be accountable, for these fundamental decisions, which it should not delegate to the Executive Director.

As a legal matter, the Commission does not have authority to delegate to the Executive Director the decision whether to move PG&E into Steps 3 and 4. "As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization."[492] "On the other hand, public agencies may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action."[493] In addition, "an agency's subsequent approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself."[494] As the Commission has recognized, "agencies cannot delegate the power to make fundamental policy decisions or 'final' discretionary decisions," although "they may act in a practical manner and delegate authority to investigate, determine facts, make recommendations, and draft proposed decisions to be adopted or ratified by the agency's highest decision makers."[495] This division of responsibilities in no way impugns the competence of the Commission's staff, which

[491] Cal. Const. art. XII, §§ 5, 6; Pub. Util. Code § 701 (conferring power on the Commission to "supervise and regulate every public utility in the State"); *id.* § 702 (specifying that "[e]very public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission").

[492] *California Sch. Employees Assn. v. Pers. Comm'n*, 3 Cal. 3d 139, 144 (1970).

[493] *Id.*

[494] *Id.*

[495] D.02-02-049, 2002 WL 467999.

is highly qualified to carry out its duties, but rather reflects the principle that discretionary and policy decisions remain the province of the Commission itself.

For example, the Commission has delegated to staff the authority to issue citations for scheduled penalty amounts for violations of specified Public Utilities Code sections and Commission General Orders, but has made clear that the Commission retains the power to make final discretionary decisions, such as whether to impose a fine if the citation is contested.[496] The Commission has delegated the ability to approve applications that meet specific criteria that the Commission has identified and adopted.[497] In each of those cases, the Commission retained responsibility for deciding matters of policy.[498]

In contrast, the Commission has previously found decisions that are based on less specific criteria and that implicate public safety to be discretionary decisions, which may not be delegated to the Commission's Executive Director. In D.11-09-006, the Commission considered PG&E's request for the Commission to delegate to the Executive Director the authority to lift operating pressure limitations on gas transmission lines upon PG&E's submission of an analysis of pressure test records and other information related to pipeline safety.[499] The Commission concluded that the "proposed delegation, particularly in light of the unspecified supporting analysis, goes well beyond the scope of ministerial matters for which the Commission may

[496] D.09-05-020.

[497] D.18-12-018, 2018 WL 6830148 at *15-16.

[498] A similar distinction appears in General Order (G.O.) 96-B's definition of matters that can be decided via a Tier 2 advice letter, which is effective following approval by Commission staff, and those that must be decided via a Tier 3 advice letter, which is effective after Commission approval. For example, a matter appropriate for a Tier 2 advice letter is "[a] tariff change that is consistent with authority the Commission previously has granted to the Utility submitting the advice letter, such as a rate change within a price floor and ceiling previously approved by the Commission for that Utility," whereas a matter appropriate for Tier 3 is "[a] tariff change in compliance with a statute or Commission order where the wording of the change does not follow directly from the statute or Commission order." G.O. 96-B, Energy Industry Rules 5.2(2), 5.3(2).

[499] D.11-09-006, 2011 WL 4425405.

properly delegate its authority."[500] In reaching that conclusion, the Commission also noted the "significant implications for public safety" of the decision that was proposed to be delegated, which weighed in favor of Commission review.[501]

The Commission's determination of whether a function is discretionary or ministerial is also informed by policy considerations.[502] Thus, the Commission has noted the need to delegate authority when there are voluminous requests to process.[503]

The decision to move PG&E into Steps 3 or 4 is subject to these limitations on delegation. This decision requires a determination of whether PG&E has "adequately" met the conditions of its corrective action plan and whether additional time "is not likely to result in the effective implementation of" its corrective action plan.[504] Depending on the nature of the actions required by a corrective action plan—which at this time have yet to be defined—and the reasons for any delay in its implementation, the determination of whether PG&E adequately met the corrective action plan's conditions may involve the exercise of significant judgment and discretion.

In some cases, triggering events may not lend themselves to remedial actions whose satisfaction is clearly defined. For example, PG&E may be placed in Step 2 because of a gas or

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[500] *Id.*

[501] *Id.* The Commission did not "foreclose the possibility of a delegation of authority to the Executive Director to act on [a future] request" to restore operating pressure, but the Commission noted that it would "determine the procedural and substantive requirements" of such requests and suggested that delegation would only be permitted if the Commission were able to set "rigor[ous] and specific[]" criteria for the granting of the request. *Id.*

[502] D.02-02-049, 2002 WL 467999 (referring to "the policy concerns involved in characterizing authority as 'discretionary' or 'ministerial' in differing contexts").

[503] *See id.* (noting the need to delegate the authority to suspend advice letters given "the massive volume of advice letters" received).

[504] ACR § 10, App'x A at 13 (Step 2.C(i), (ii)); *see also id.* at 14 (Step 2.D(i)).

electric incident that resulted from PG&E's failure to follow prudent management practices.[505] Under the Process, the Step 2 corrective action plan must be designed to correct or prevent a recurrence of that event.[506] The determination of whether PG&E has taken sufficient action to prevent a recurrence is a discretionary one.

Even if the conditions of the corrective action plan are defined in wholly objective terms, discretionary decisions will remain. If there are multiple conditions under the corrective action plan and PG&E meets some but not all of them, there will remain the policy question of whether a partial implementation of the corrective action plan's conditions was adequate. And, if PG&E does not adequately meet the conditions of a Step 2 corrective action plan, there is the further question of whether "additional time in Step 2 is not likely to result in the effective implementation of" the corrective action plan.[507] Determining whether an undefined amount of additional time is "likely" to result in "effective" implementation requires the exercise of judgment.

Another discretionary decision that the ACR proposal would delegate to the Executive Director is the determination "that additional enforcement is necessary because of PG&E's systematic non-compliance or poor performance with its Safety and Operational Metrics over an extended period," which is a triggering event for Step 4.[508] As with the determination of whether PG&E adequately implemented a corrective action plan, the basis upon which the Executive Director would make this determination is not clearly specified. "Systemic non-compliance,"

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[505] *Id.* at 12.

[506] *Id.* The ACR also proposes that a Step 2 corrective action plan be designed to "otherwise mitigate an ongoing safety risk or impact." *Id.* This condition underscores the discretionary nature of the determination whether or not PG&E has adequately implemented the corrective action plan and therefore should be moved to Step 3.

[507] *Id.* at 13.

[508] *Id.* at 14.

"poor performance," and the duration of the "extended period" are undefined and leave room for substantial interpretation and judgment. Indeed, PG&E recommends the removal of "poor performance" as a trigger in the Process, because that condition appears subjective and does not provide a sufficient indication of what actions by PG&E will result in it being placed in Step 4. A further question of policy is whether, even assuming that there has been systematic non-compliance, additional enforcement is "necessary."

The determinations described above are unlike the ministerial task of issuing uncontested citations, and are much more akin to process of lifting limits on operating pressures in gas lines that the Commission found to be discretionary, and thus non-delegable, in D.11-09-006. As in that decision, the basis for the determination here of whether to move PG&E to a higher step in the Process is not specified in detail by the Commission in advance. Rather, it may require discretionary judgments about whether completion of corrective action plan conditions is adequate, whether future satisfaction of a corrective action plan is likely, at what point non-compliance becomes systematic, or whether additional enforcement is necessary. In addition, such a decision may have public safety implications, which further weighs in favor of review by the Commission itself. Moreover, policy considerations do not support delegation in these circumstances: the demand to evaluate whether PG&E should move to a higher level of the Process will arise rarely (if at all), and therefore should not require the Commission to delegate such evaluation in the interest of expediency. Accordingly, the decision to move PG&E to Steps 3 and 4 of the Process is a discretionary decision that should not be delegated to the Executive Director.

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While PG&E views the foregoing two recommendations as the most important modifications to the proposed Process, PG&E further suggests that the Commission consider other changes that could improve the clarity of the proposal and the effectiveness of the Process.

Entry At The Lowest Applicable Step. PG&E recommends that there be a presumption that PG&E enter the Process at the lowest applicable step. The Process should be designed to detect issues at an early stage and facilitate prompt corrective action to resolve them. Entering the Process at the lowest applicable step will initiate the corrective actions needed to resolve the relevant triggering issue without undertaking more invasive interventions than are required. Of course, if PG&E is not successful in implementing the initial corrective action, the Process would then provide for increasing interventions. The presumption would be rebuttable, such that the Commission could, if circumstances warrant, initiate a higher step in the Process based on the occurrence of an applicable trigger.

Exit From Steps. PG&E recommends providing that PG&E will exit a step of the Process if it either has adequately implemented a corrective action plan within the required timeframe, as the ACR proposes, or has resolved the underlying triggering event that caused it to enter the step. Because the corrective action plan is designed to address the triggering event,[509] the resolution of the triggering event itself should *a fortiori* remedy the issue that caused PG&E to enter the step of the Process. For similar reasons, PG&E recommends a modification to the ACR's conditions for exit from Step 5, which include not only that PG&E has corrected all Step 5 triggering events but also that PG&E has remained in material compliance with Safety and Operational Metrics for a period of 18 months. Although certain triggering events in the Process are tied to the Safety and Operational Metrics, many are not, and the objective of the Process should be to remedy

[509] *See, e.g.*, ACR § 10, App'x A at 11.("The Corrective Action Plan shall be designed to correct or prevent a recurrence of the Step 1 triggering event …").

triggering events. Thus, it is appropriate to base exit from the Process on the resolution of triggering events or adequate implementation of the corrective action plan, and not on compliance with the metrics for a specified period.

Role Of SNO Committee. PG&E recommends that the Board Committee responsible for reporting obligations in the Process should be the SNO Committee of the Utility, not a safety subcommittee (as proposed in the ACR), consistent with PG&E's recommendation that expanding the role of the SNO Committee is more appropriate than forming a separate safety subcommittee.[510]

Future Triggering Events. Certain triggering events within the Process are based on the occurrence of gas or electric incidents that result in the destruction of structures, and others on a violation of law by PG&E.[511] PG&E recommends that the Commission clarify that the events that would give rise to such triggering events are limited to those occurring after the effective date of PG&E's Plan. For example, a prepetition wildfire would not give rise to a triggering event, even if a finding is made after the Effective Date that such wildfire involved a violation of law. That clarification is needed in order to ensure that the Process focuses on the identification and remediation of safety and compliance issues as they may arise in the future in the context of the changes in PG&E's governance and operations. At a minimum, the Process should not apply to the wildfires ignited in 2017 and 2018, since the Commission has already instituted an adjudicatory proceeding to address PG&E's actions in connection with those events.

Moving To Enhanced Enforcement Stage. Because Steps 3 through 6 of the Process entail significant interventions into PG&E's operations, the decision to move PG&E into one of those steps should be made after consideration of all relevant factors. PG&E therefore

[510] *See* Part IV.A.2.b.

[511] *See, e.g.*, ACR § 10, App'x A at 14.

recommends providing that, in determining whether PG&E should enter the Enhanced Enforcement stage of the Process, and whether to move to the next level within that stage, the Commission must consider the totality of the circumstances.

Termination Of The Process. The ACR proposal does not provide for an end to the Process, thereby implying that it would apply to PG&E indefinitely. While PG&E supports the establishment of the Process upon PG&E's emergence from bankruptcy and its continuation for a period thereafter, PG&E does not believe that such a process should be applied in perpetuity, especially if PG&E has demonstrated a lesser need for enhanced oversight and enforcement by virtue of not entering the higher steps of the Process for a prolonged period. PG&E therefore recommends that it should no longer be subject to the Process if either (1) PG&E has not entered the Enhanced Enforcement stage of the Process for a period of five years, or (2) the Commission approves a change in control of PG&E. As noted in Part IV.A.2.d, PG&E also proposes to sunset the Board governance provisions of the ACR based on these same timeframes, among others.

Finally, PG&E recommends certain modifications to the language regarding the steps, in order to implement the above recommendations and make some additional clarifications. Proposed additions and substitutions, with explanations of PG&E's justifications for such changes, are included as Appendix A hereto.

C. PG&E's Executive Compensation Structure (Scoping Memo § 3.1)

PG&E's new executive compensation structure aligns with customer and workforce welfare—including protection of lives, property, and continuity of service.[512] PG&E's executive

[512] Feb. 26, 2020 Tr. at 368 (cross-examination testimony of Mr. Vesey) ("[B]roadly speaking, customer welfare started by saying that it is our objective to maximize customer welfare defined as the protection of their property, their lives, and the continuity of service.").

compensation structure does this by using heavily safety-focused performance metrics that place the vast majority of executive compensation "at risk." PG&E's performance metrics are objectively defined, appropriately challenging, and auditable. Moreover, PG&E's performance metrics align compensation most heavily not with safety efforts, but with positive safety *outcomes*.

No party appears to contend that PG&E's executive compensation structure fails to satisfy the requirements of AB 1054. Rather, a few parties have floated proposals that they believe could improve the structure. PG&E addresses these suggestions below. Whatever their merits, however, these suggestions do not rebut PG&E's showing that its proposed executive compensation program satisfies the particular requirements of AB 1054 as codified in Sections 8389(e)(4) and (e)(6).[513] To the extent the Commission is persuaded by intervenors' suggestions that the executive compensation program can be improved, the Commission can address those ideas in the future; they do not stand in the way of a timely finding that PG&E complies with AB 1054.

1. The Executive Compensation Structure Satisfies Section 8389(e)(4).

Section 8389(e)(4) provides in full:

> The electrical corporation [must show that it] has established an executive incentive compensation structure approved by the division and structured to promote safety as a priority and to ensure public safety and utility financial stability with performance metrics, including incentive compensation based on meeting performance metrics that are measurable and enforceable, for all executive officers, as defined in Section 451.5. This may include tying 100 percent of incentive compensation to safety performance and denying all incentive compensation in the event the electrical corporation causes a catastrophic wildfire that results in one or more fatalities.

[513] *See* Pub. Util. Code § 8389(e)(6)(C) ("It is the intent of the Legislature, in enacting this paragraph and paragraph (4), that any approved bankruptcy reorganization plan of an electrical corporation should, in regards to compensation of executive officers of the electrical corporation, comply with the requirements of those paragraphs.").

These statutory requirements are satisfied here:

Covered Officers. Section 8389(e)(4) requires the compensation structure to apply to "all executive officers, as defined in Section 451.5." As PG&E stated in its testimony, PG&E interprets "executive officers" to mean the Utility's officers who qualify as "executive officers" under 17 C.F.R. § 240.3b-7 (plus two officers listed in § 451.5 who are not listed in § 240.3b-7, namely, the Secretary and Treasurer).[514] As PG&E noted, this interpretation accords with a Commission ruling construing "officer" in Public Utilities Code Section 706 to mean the officers encompassed by Section 240.3b-7.[515] PG&E believes that its interpretation of "executive officers" is reasonable, and no party has contended otherwise.

Safety Incentives. Section 8389(e)(4) requires the compensation to be "structured to promote safety as a priority and to ensure public safety." PG&E's Short-Term Incentive Plan ("STIP") and Long-Term Incentive Plan ("LTIP") unquestionably achieve this.

STIP payments will constitute about 20% of overall executive compensation at target levels (18% to 21% depending on the executive).[516] The STIP uses performance metrics that are weighted 75% to customer and workforce welfare, including more than 70% to safety-related metrics.[517] The STIP's safety-related metrics, which are almost entirely outcome-based,[518] align with reducing reportable fire ignitions, reducing electric asset failures, reducing the scope of PSPS and related safety risks through installing sectionalization devices, reducing large gas overpressure events, reducing gas dig-ins, ensuring safe dam and nuclear operations, reducing employee injuries, and reducing gas operations customer response time and 911 emergency

[514] *See* PG&E-01 at 7-20 & n.21 (opening testimony of Mr. Lowe).

[515] *See* Resolution E-4963 (Dec. 13, 2018).

[516] *See* PG&E-01 at 7-9 (opening testimony of Mr. Lowe); PG&E-07 at 7-9 (errata).

[517] *See* PG&E-01 at 7-10 (opening testimony of Mr. Lowe).

[518] *See id.*

response time.[519] The STIP's heavy emphasis on safety leads the industry: Based on PG&E's analysis of 19 other utilities in 2019, only 20% used customer/public safety metrics, and only one used such a metric that was outcome-based.[520]

LTIP payments will constitute about 44% of overall executive compensation at target levels (36% to 55% depending on the executive)—such that combined "at risk" incentive compensation from both the STIP and the LTIP will comprise the vast majority of overall executive compensation.[521] The LTIP uses performance metrics that are weighted at least 75% to safety. Specifically, the LTIP's metrics are weighted (1) 25% to system hardening (which reduces wildfire risk, and in the process, the need for PSPS); (2) 25% to substation enablement (which reduces the scope of PSPS and related safety risks); and (3) 50% to a "Customer Experience Index" metric, half of which is based on timely and accurate notifications of PSPS to affected customers (which helps ensure customer safety), and half of which is based on an overall customer satisfaction score (which will be informed in significant part by customer perceptions of PG&E's safety performance).[522] Although the LTIP's "System Hardening" and "Substation Enablement" metrics are not strictly outcome-based, AB 1054 does not require that they be outcome-based, and they align with activities that are critical for mitigating safety risks; indeed, "PG&E's risk analysis indicates that, while the risk of wildfires is inherent in delivery of electricity in California and can never be entirely eliminated, completing just 20 percent of

[519] *See id.* at 7-10 – 7-15 (listing and describing the STIP metrics); PG&E-06 at 7-Exh.1-1 – 7-Exh.1-13 (charts containing additional details regarding STIP metrics).

[520] *See* PG&E-01 at 7-9 (opening testimony of Mr. Lowe).

[521] *See id.* at 7-16.

[522] *See id.* at 7-16 – 7-18 (listing and describing the LTIP metrics); *see also* PG&E-06 at 7-Exh.1-14 – 7-Exh.1-18 (charts containing additional details regarding LTIP metrics). LTIP scores calculated based on the metrics can be adjusted up or down based on a "Total Shareholder Return" modifier, discussed below.

PG&E's planned system hardening can reduce the risk of a catastrophic wildfire by up to 90 percent."[523]

The LTIP also aligns with safety in another respect. All LTIP awards are equity-based, and the executives will be required to hold the awards for at least three years after the grant date.[524] Thus, LTIP awards' realizable value to the executives will depend over time on how PG&E Corporation common stock performs. The stock's relative performance depends primarily on PG&E's performance, and PG&E's performance depends heavily on public safety performance. Inasmuch as LTIP awards must be held for at least three years after grant, all such awards necessarily align with strong safety performance over the long term.

SBUA and TURN advocate modifying some of the performance metrics, but they have not disputed that the metrics *as proposed* promote public safety as the statute requires.[525] Thus, for example, SBUA says that the STIP's "Distribution Circuit Sectionalization" metric could be improved by expanding it to encompass means of reducing PSPS scope beyond installation of sectionalization devices.[526] TURN says that the LTIP's "PSPS Notification Accuracy" metric also could be expanded to cover additional matters.[527] And TURN speculates that the STIP's "System Hardening" metric potentially could be replaced because "there may be other, more

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[523] PG&E-01 at 7-17 (opening testimony of Mr. Lowe).

[524] *See id.* at 7-15.

[525] SBUA also expresses concern over the fact that the same metrics apply to the entire executive team, which SBUA says "does not establish a responsibility-maximizing incentive." (SBUA-01 at 13 (reply testimony of Mr. Howard).) SBUA ignores that the executive team bears responsibility for the *entirety* of the company, and that the executives are expected to work together to ensure overall fulfillment of the company's mission. In any event, in response to SBUA's questions on cross-examination, PG&E clarified that STIP payments to individual executives can be adjusted up or down based on each executive's *individual* job performance. (*See* Mar. 3, 2020 Tr. at 1167-68 (cross-examination testimony of Mr. Lowe); *see also* PG&E-01 at 7-15 – 7-16 (describing the "individual performance modifier").)

[526] *See* SBUA-01 at 11-12 (reply testimony of Mr. Howard).

[527] *See* TURN-01 at 32-33 (reply testimony of Mr. Long).

cost-effective ways of mitigating wildfire risk."[528] SBUA's and TURN's proposals miss the point of this proceeding. The parties can be expected to differ on precisely how best to design individual metrics because "there is little consensus on the specific principles that should guide EC decisions"[529]—but the question presented here is whether PG&E's executive compensation structure, as proposed, fulfills the requirements of Public Utilities Code Sections 8389(e)(4) and (e)(6). SBUA and TURN do not and cannot dispute that the metrics, even without the modifications they propose, are "structured to promote safety as a priority and to ensure public safety."[530]

Some of SBUA's and TURN's proposals warrant additional comment because they threaten to undermine the shared objective of promoting public safety. SBUA and TURN propose metrics that would promote reducing not just the *scope* of PSPS through technological solutions, but also the *number* and *frequency* of PSPS.[531] Specifically, SBUA's and TURN's witnesses (who have no experience with either executive compensation design or PSPS)[532] propose metrics that would incentivize *not* calling a PSPS—even though that momentous decision, with public safety risks either way, is supposed to be based on objective scientific criteria such as wind speeds and fire threat potential.[533] SBUA and TURN thus propose to put a

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[528] *Id.* at 32, 36.

[529] TURN-X-09 (Willis Towers Watson, *Principles and Elements of Effective Executive Compensation Design*, at 2 (Apr. 2017).

[530] Pub. Util. Code § 8389(e).

[531] *See* SBUA-01 at 11 (reply testimony of Mr. Howard); TURN-01 at 32 (reply testimony of Mr. Long).

[532] *See* SBUA-01 at 24 (statement of qualifications of SBUA's witness Mr. Howard, which lists nothing pertaining to executive compensation); TURN-01 at App'x A (same for TURN's witness Mr. Long); Mar. 4, 2020 Tr. at 1402 (cross-examination testimony of Mr. Long) (admitting that he has never had responsibility for designing an executive compensation program, has never published a peer-reviewed article regarding executive compensation design, and does not hold a degree in an executive compensation-related area).

[533] *See* SBUA-01 at 12 (proposing to revise the STIP's "Customers Experiencing Multiple Interruptions" metric so that it primarily measures PSPS outages); TURN-01 at 32 (reply testimony of Mr. Long) (proposing a metric called "Customer Hours of PSPS Shutoffs … per High Fire Threat District … [M]ile

financial thumb on the scales in a situation where lives potentially hang in the balance. This is untenable.

PG&E certainly shares the goal of reducing the number and frequency of PSPS. Accordingly, PG&E has included in the LTIP the "System Hardening" metric, which aligns with reducing wildfire risk, which, in turn, will *naturally* reduce the need for and frequency of PSPS (all else being equal).[534] PG&E deliberately eschewed metrics that *artificially* would promote reduction in the number, frequency, or duration of PSPS, because PG&E did not want to inject personal financial motivations into the decision of whether to implement a PSPS (or when to re-energize following a PSPS).[535] Put simply, when PG&E's personnel are deciding whether to implement a PSPS for public safety reasons, PG&E wants them focused exclusively on safety—not personal financial considerations.

TURN appeared to acknowledge on cross-examination the reasons its and SBUA's proposed metrics are ill-conceived:

> Q. Would you agree that that decision [whether to call a PSPS] should be made to the extent possible based on objective criteria such as for example weather conditions?
>
> A. It should be made on based on a lot of—many considerations. And there are others in my organization who have been focused on that in the deenergization docket. But I would generally agree with your statement.

…. to provide a strong incentive to limit the *number*, scope and duration of PSPS shutoffs") (emphasis added); TURN-02 at 3 (TURN data responses admitting that its proposed "Customer Hours of PSPS Shutoffs per High Fire Threat District Mile" metric would be defined as "[t]he number of customer *hours* of de-energization due to PSPS") (emphasis added); Mar. 4, 2020 Tr. at 1404-05 (cross-examination testimony of Mr. Long) (same).

[534] *See* PG&E-01 at 7-17 (opening testimony of Mr. Lowe); *id.* at 6-7 (opening testimony of Mr. Pender).

[535] The STIP's "Customers Experiencing Multiple Interruptions" metric is not to the contrary. It is an industry-standard reliability metric that excludes certain types of major weather days, and thus tends to exclude PSPS outages. (*See* PG&E-01 at 7-14 (opening testimony of Mr. Lowe); PG&E-06 at 7-Exh.1-12 (chart with details about the metric stating that "2.5 Beta major event days based on Institute of Electrical and Electronics Engineers Standard 1366" are excluded from the metric).)

> Q. Certainly you would agree injecting someone's personal financial motivations into the decision of whether to implement the PSPS would be a bad idea?
>
> A. I think the decision to—whether or not to implement PSPS [and] the scope should not be based on financial considerations.[536]

PG&E strongly urges rejection of SBUA's and TURN's proposed PSPS-related metrics as contrary to the public interest.

Financial Stability Incentives. Section 8389(e)(4) requires executive compensation to be "structured to promote … utility financial stability." The STIP and the LTIP do this. As noted, the STIP and the LTIP collectively align with customer, public, and workforce safety, and thus align with financial stability. In addition, the STIP uses core earnings per share as a performance metric (weighted 25%), and thus promotes financial stability directly.[537] And the LTIP uses a Total Shareholder Return ("TSR") modifier that adjusts otherwise payable LTIP awards up or down depending on PG&E Corporation's stock price appreciation and dividends relative to a group of peer utility companies.[538] The LTIP therefore also aligns directly with financial performance and stability.

Objective Performance Metrics. Section 8389(e)(4) requires the compensation structure to use "performance metrics[] [and to] includ[e] incentive compensation based on meeting performance metrics that are measurable and enforceable." PG&E's testimony describes the performance metrics with specificity, and makes clear that all are objectively defined, measurable, enforceable, and auditable.[539] Additionally, "PG&E ensures and will continue to

[536] Mar. 4, 2020 Tr. at 1403-04 (cross-examination testimony of Mr. Long).

[537] *See* PG&E-01 at 7-10, 7-14 (opening testimony of Mr. Lowe).

[538] *See id.* at 7-16, 7-18 – 7-19. These financial-related performance metrics also align with operational efficiency, and thus, affordability.

[539] *See id.* at 7-10 – 7-14, 7-16 – 7-18; PG&E-06 at 7-Exh.1-1 – 7-Exh.1-18.

ensure that the underlying data used to evaluate achievement of incentive compensation milestones is reliable."[540] "PG&E historically has used its internal audit unit to confirm such reliability," and "is reviewing external verification solutions to buttress the internal audit verification process."[541]

TURN nevertheless criticizes the "System Hardening" metric as inadequately defined.[542] It is unclear what more TURN would like to know about this metric; the exhibits to PG&E's testimony explain what system hardening consists of, and exactly how and when a circuit mile is recorded as "complete."[543] These parameters accord with PG&E's 2020 Wildfire Mitigation Plan, where further detail is provided.[544] TURN also complains that the "Customer Satisfaction Score" component of the LTIP's "Customer Experience Index" metric is "potentially subject to manipulation as the results of the [customer] survey could be … goosed by advertising just before surveys are conducted."[545] Of course, TURN provides no evidence to suggest that anything like that would occur. TURN also worries about the research vendor's ability to suppress surveys to customers caught in a public safety emergency,[546] which TURN says is when customers are "most likely to provide negative responses."[547] But it is entirely appropriate to refrain from administering customer surveys during public emergencies, due to the need to avoid distracting customers who may be in immediate peril, and to avoid causing confusion with public safety information emanating from PG&E or local authorities.

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[540] PG&E-01 at 7-15 n.17 (opening testimony of Mr. Lowe).

[541] *Id.*

[542] *See* TURN-01 at 32 (reply testimony of Mr. Long).

[543] *See* PG&E-06 at 7-Exh.1-15.

[544] *See* PG&E's 2020 Wildfire Mitigation Plan Report, filed in R.18-10-007 (Feb. 7, 2020).

[545] TURN-01 at 34 (reply testimony of Mr. Long).

[546] *See* PG&E-06 at 7-Exh.1-18 (exhibits to opening testimony of Mr. Lowe).

[547] TURN-01 at 34 (reply testimony of Mr. Long).

Tying 100% Of Incentive Compensation To Safety Performance. Section 8389(e)(4) provides in permissive, not mandatory, language that the compensation structure "may include tying 100 percent of incentive compensation to safety performance and denying all incentive compensation in the event the electrical corporation causes a catastrophic wildfire that results in one or more fatalities."[548] As PG&E explained in its testimony, doing so here would not adequately align with PG&E's *overall* mission of providing safe, reliable, affordable, and clean energy to its customers.[549] Though PG&E unequivocally views safety as the most important pillar of its mission, the other aspects also are important and should be promoted. As PG&E explained, with an overly narrow or exclusive focus on safety, PSPS could be routinely implemented—and although that might ensure wildfire safety, it would cause hardships to PG&E's customers.[550] PG&E's mission is and must be to provide service both reliably and safely. As such, PG&E's compensation structure aligns with customer welfare overall—including safety as its most critical element—and the structure does so without sacrificing reliability and affordability.[551]

That said, the Board of Directors and the Compensation Committee have discretion to reduce or eliminate STIP scores for any reason (e.g., in the event of a catastrophic public safety event), and they have done so on multiple occasions, including following the Camp Fire in 2018 when they eliminated all STIP awards.[552] Similarly, the Board and the Compensation

[548] *See, e.g.*, *Tarrant Bell Prop., LLC v. Superior Court*, 51 Cal. 4th 538, 542 (2011) ("Under well-settled principles of statutory construction, we ordinarily construe the term 'may' as permissive and the word 'shall' as mandatory … .").

[549] *See* PG&E-01 at 7-9 – 7-10, 7-21 (opening testimony of Mr. Lowe).

[550] *See id.* at 7-9 – 7-10.

[551] For example, the STIP uses the reliability-based "Customers Experiencing Multiple Interruptions" metric, and the STIP's "Core Earnings per Share" metric aligns with operational efficiency and therefore affordability. *See id.* at 7-10, 7-14; PG&E-06 at 7-Exh.1-12 – 7.Exh.1-13.

[552] *See* PG&E-01 at 7-15, 7-21 (opening testimony of Mr. Lowe).

Committee may at any time suspend, terminate, modify, or amend the LTIP in any respect, may reduce LTIP scores to zero, and may cancel or annul any grant of LTIP awards provided that such cancellation or annulment does not, without the employee's consent, adversely affect the employee's rights under incentive awards previously granted.[553] The Board's and the Compensation Committee's discretion provides an important overlay to the STIP and the LTIP that is consistent with the statutory proviso permitting, but not mandating, elimination of all incentive payments in the event of a catastrophic wildfire.

TURN nevertheless asserts that the discretion should be constrained. TURN contends, without a statutory basis, that if PG&E equipment causes a wildfire or gas event resulting in one or more fatalities, 50% of incentive payments should be mandatorily withheld, with *no* discretion to do otherwise regardless of the circumstances leading to the fire.[554] TURN's proposal would negatively affect PG&E's ability to recruit talented executives. TURN fails to acknowledge that incentive compensation at target levels is necessary to ensure that the executives earn a *market-competitive* level of compensation—i.e., it is necessary to enable PG&E to compete in the marketplace for top talent.[555] Although incentive compensation can be withheld in appropriate circumstances—and as noted, PG&E in the past has done so—making such withholding mandatory without regard to all the facts and circumstances can reduce overall compensation below market levels for seemingly arbitrary reasons, and thus impair PG&E's ability to recruit.

TURN's own witness provided examples illustrating why. Its witness admitted that under its proposal, PG&E's executives categorically would lose at least 50% of their incentive compensation—thereby falling below market—if certain events occur that are outside the

[553] *See id.* at 7-19, 7-21 – 7-22.

[554] *See* TURN-01 at 30, 35, 37 (reply testimony of Mr. Long).

[555] *See* PG&E-01 at 7-3 (opening testimony of Mr. Lowe) (stating that foundational and incentive compensation "together are necessary to provide a market-competitive level of compensation").

executives' or even the company's control. TURN's witness admitted, for example, that the executives would lose at least 50% of their incentive compensation if a catastrophic wildfire results from a brand new piece of equipment failing due to a latent manufacturing defect PG&E could not have known about, or if a sudden gust of wind blows a tree branch into a PG&E power line from 100 feet away.[556] TURN's witness seemed unaware of, and/or unconcerned about, the negative impact this regime would have on PG&E's ability to recruit, conceding he is not "aware of any articles or studies or literature that discusses the effect on a company's ability to recruit if employees can lose their incentive compensation for reasons that are out of their control."[557]

TURN also proposes, again without a statutory basis, that, for the portion of incentive compensation that would *not* be automatically withheld under its proposal, the Board or Compensation Committee's discretion to withhold should be circumscribed by written parameters.[558] TURN argues that lack of such written parameters would mean "this aspect of the [executive compensation structure] fails to meet the measurable and enforceable requirement."[559] TURN's contention wrongly conflates performance metrics with discretion; the metrics are what the statute requires be "measurable and enforceable," whereas discretion is what reduces or eliminates payments even when the metrics are met.[560] Moreover, TURN admitted that discretion, by its nature, must take account of facts and circumstances that cannot necessarily be pre-defined. TURN managed to come up with only four factors it thinks the Board or Compensation Committee might appropriately consider,[561] admitted it could not provide "an

[556] *See* Mar. 4, 2020 Tr. at 1414-15 (cross-examination testimony of Mr. Long).

[557] *Id.* at 1415.

[558] *See* TURN-01 at 30, 35, 37 (reply testimony of Mr. Long).

[559] *Id.* at 37 (reply testimony of Mr. Long).

[560] *See* Pub. Util. Code § 8389(e)(4).

[561] *See* TURN-02 at 7 (TURN data responses); Mar. 4, 2020 Tr. at 1418-19 (cross-examination testimony of Mr. Long).

exhaustive list of all the factors that should be considered,"[562] and further admitted it "maybe" "impossible … to foresee all the facts and circumstances surrounding some future event that might appropriately be considered in [an] exercise of discretion."[563]

The Board and the Compensation Committee having discretion to reduce or eliminate incentive awards is consistent with AB 1054, and strikes a proper balance between withholding awards when warranted on the one hand, and facilitating PG&E's recruitment and retention of a talented executive team on the other hand. PG&E even would support a presumption of withholding, as discussed below concerning the ACR's proposal in this regard. But TURN's proposals are untethered to any requirement of the statute, and would be inimical to PG&E's ability to recruit talented executives.

2. The Executive Compensation Structure Satisfies Section 8389(e)(6).

Section 8389(e)(6) requires a utility to show that it has "established a compensation structure for any new or amended contracts for executive officers" that is based on certain principles. Specifically:

> The electrical corporation [must show that it] has established a compensation structure for any new or amended contracts for executive officers, as defined in Section 451.5, that is based on the following principles:
>
> (i) (I) Strict limits on guaranteed cash compensation, with the primary portion of the executive officers' compensation based on achievement of objective performance metrics[; and] (II) [n]o guaranteed monetary incentives in the compensation structure.
>
> (ii) It satisfies the compensation principles identified in paragraph (4).
>
> (iii) A long-term structure that provides a significant portion of compensation, which may take the form of grants of the electrical corporation's stock, based on the electrical corporation's long-term performance and value. This compensation shall be held or deferred for a period of at least three years.

[562] Mar. 4, 2020 Tr. at 1419 (cross-examination testimony of Mr. Long).

[563] *Id.*

(iv) Minimization or elimination of indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest in the electrical corporation.[564]

Each of these statutory requirements is satisfied here:

New Or Amended Contracts. Section 8389(e)(6)'s reference to "new or amended contracts" creates a threshold legal question about whether subsection (e)(6)'s provisions apply in the absence of written employment contracts (which PG&E generally does not have with its executives).[565] To obviate any uncertainty over this issue, PG&E agrees that subsection (e)(6)'s provisions apply to the Utility even in the absence of written employment contracts with its executives.

Cash/Incentive Compensation Mix. Section 8389(e)(6)(A)(i)(I) requires the compensation structure to place "[s]trict limits on guaranteed cash compensation, with the primary portion of the executive officers' compensation based on achievement of objective performance metrics." The executive compensation structure PG&E has presented achieves this. Its only guaranteed cash compensation is base salary (plus a modest cash stipend in lieu of broader perquisites), which will constitute only about 36% of total compensation at target levels (24% to 44% depending on the executive).[566] The structure's remaining compensation—about 64% at target levels—will consist of incentive compensation payable through the STIP and the LTIP. The structure thus places the vast majority of overall executive compensation "at risk."

No Guaranteed Monetary Incentives. Section 8389(e)(6)(A)(i)(II) prohibits "guaranteed monetary incentives in the compensation structure." STIP and LTIP awards are entirely "at risk," and thus, executives' only guaranteed monetary payments will be their foundational compensation. Further, as noted, PG&E generally does not have formal employment contracts

[564] Pub. Util. Code § 8389(e)(6)(A).

[565] *See* PG&E-01 at 7-22 (opening testimony of Mr. Lowe).

[566] *See id.* at 7-8, 7-23.

with its executives, and thus, for example, there is no contractual entitlement to continued employment, to a salary for a particular term following termination of employment, or to a pay raise from one year to the next.[567]

TURN expresses concern regarding whether PG&E has established metric achievement milestones that are too easy, which TURN says could convert incentive compensation into "guaranteed" compensation.[568] TURN's concern ignores PG&E's testimony establishing that it calibrated the milestones to strike an appropriate balance between being challenging on the one hand (so that they incentivize desired outcomes) and being reasonably achievable on the other hand (because if metrics "are perceived as out of reach, they will not have their desired incentive effect").[569]

Moreover, PG&E's publicly reported data demonstrates that it has selected metric achievement milestones that generally require progress over recent historical performance, and thus by definition will be challenging to achieve. For example, in 2019, PG&E completed 171 miles of system hardening work.[570] PG&E's "System Hardening" metric in the LTIP will require significantly more progress to achieve even the "threshold" milestone, to say nothing of the "target" and "maximum" milestones. Specifically, PG&E's "System Hardening" metric sets "threshold," "target," and "maximum" achievement milestones of 919 miles, 1021 miles, and

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[567] *See id.* at 7-22 – 7-23. LTIP awards are made through written award contracts, but PG&E does not consider those to be employment contracts. (*See id.* at 7-22 n.22.)

[568] TURN-01 at 27, 29 (reply testimony of Mr. Long).

[569] PG&E-01 at 7-6 (opening testimony of Mr. Lowe); *see also id.* (stating that a well-designed executive compensation structure may include "(i) minimum or 'threshold' metrics that must be met before any incentive payment is made; (ii) 'target' metrics that are more challenging but still reasonably achievable, and that result in higher payouts necessary to provide a market-competitive level of compensation; and (iii) 'maximum' metrics that are even more ambitious but still within the realm of possibility, and that result in even higher payouts to provide even greater incentives to achieve desired outcomes") (footnote omitted).

[570] *See* PG&E's 2020 Wildfire Mitigation Plan Report, filed in R.18-10-007, at ExecutiveSummary-7 and 2-28 (Feb. 7, 2020).

1225 miles, respectively, for the LTIP's three-year performance period—an average of 306.3 miles, 340.3 miles, and 408.3 miles, respectively, per year.[571]

Compliance With Section 8389(e). Section 8389(e)(6)(A)(ii) requires the compensation structure to "satisf[y] the compensation principles identified in paragraph (4)" of subsection (e). PG&E's compensation structure satisfies those principles, as outlined above.

Equity Awards. Section 8389(e)(6)(A)(iii) requires the compensation to include "[a] long-term structure that provides a significant portion of compensation, which may take the form of grants of the electrical corporation's stock, based on the electrical corporation's long-term performance and value," with such "compensation … held or deferred for a period of at least three years." The LTIP accomplishes this because: (1) all of its awards are equity awards; (2) those equity awards will comprise about 44% of total executive compensation at target levels, which is a "significant portion" under any reasonable interpretation;[572] and (3) the equity awards must be held for three years after the grant date.[573]

Minimization Of Ancillary Compensation. Section 8389(e)(6)(A)(iv) requires "[m]inimization or elimination of indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest in the electrical corporation." Although Utility executives receive corporate perquisites such as parking and health club memberships, these are *de minimis*, are typical in the industry, and are aligned with shareholder and other stakeholder interests by

[571] *See* PG&E-06 at 7-Exh.1-15.

[572] *See* Merriam Webster's Ninth New Collegiate Dictionary (10th ed. 1996) (defining "significant" as "a noticeably or measurably large amount"); *cf. Defenders of Wildlife v. Norton*, 258 F.3d 1136, 1145-46 (9th Cir. 2001) (construing "significant portion" of a geographical area to mean a "major" portion of such area).

[573] *See* PG&E-01 at 7-15 – 7-16, 7-23 (opening testimony of Mr. Lowe).

serving recruiting, retention, and other purposes (e.g., continued executive health in the case of health club memberships).[574]

* * *

In sum, PG&E's executive compensation structure complies with the provisions of Sections 8389(e)(4) and (e)(6). Although some parties have proposed what they believe to be improvements, no party has submitted testimony demonstrating that the existing structure, as set forth in PG&E's testimony, fails to comply with the statute.

3. PG&E Supports Numerous Of The ACR's Proposals Regarding Executive Compensation. (ACR § 9)

PG&E supports nearly all of the ACR's proposals concerning executive compensation. In fact, as PG&E explains below, most of those proposals track the structure PG&E has proposed. PG&E nevertheless has concerns with some of the proposals.

Promoting Recruitment/Retention. PG&E agrees that its executive compensation structure must reflect "both safety incentives and the need to attract and retain highly qualified executives to achieve transformation."[575] The latter goal is already challenging, given the many difficulties the company faces, and overly restrictive or punitive compensation policies would threaten PG&E's ability to have the most qualified leaders in place, contrary to the public interest. As noted, PG&E has designed its executive compensation structure to strike an appropriate balance, including by ensuring that incentive compensation—which as noted is necessary to pay a market-competitive level of compensation—is not automatically withheld based on events that the executives might perceive as random or outside their control.

[574] *Id.* at 7-8, 7-23.

[575] ACR § 9, App'x A at 9

Public Disclosure Of Compensation. PG&E supports the ACR's proposal for "[p]ublicly disclosed compensation arrangements for executives."[576] PG&E already makes such disclosures in its annual proxy statements.[577]

Written Compensation Agreements With Executives. PG&E supports the ACR's proposal for "[w]ritten compensation agreements with executives"[578] insofar as this connotes the written shareholder-approved LTIP, the use of written award contracts under the LTIP, and public disclosure of the terms, features, and results of the compensation programs. As noted, PG&E generally does not have written employment contracts with its executives more broadly, and does not support a requirement of using such contracts. PG&E does not dispute that its executive compensation programs are subject to Public Utilities Code Section 8389(e)(6) even in the absence of written employment contracts.

Guaranteed Cash Compensation. PG&E supports the ACR's proposal that "[g]uaranteed cash compensation [for executives] as a percentage of total compensation … not exceed industry norms."[579] PG&E ensures that its foundational compensation for executives is within industry norms.

Three-Year Hold On Equity Awards. PG&E supports the ACR's proposal for "[h]olding or deferring the majority … of incentive compensation, in [the] form of equity awards, for at least 3 years."[580] As noted, PG&E's executive compensation structure already makes LTIP equity awards a majority of incentive compensation, and subjects such equity awards to a three-

[576] *Id.* at 9.

[577] *See* PG&E Corporation and Pacific Gas and Electric Company Joint Proxy Statement at 55-94 (May 17, 2019), *available at* http://s1.q4cdn.com/880135780/files/doc_financials/2019/05/2019-Proxy-Statement-final-web-ready.pdf.

[578] ACR § 9, App'x A at 9

[579] *Id.*

[580] *Id.*

year hold. PG&E does not support subjecting a "super-majority"[581] of incentive compensation to such a requirement; the Legislature did not see fit to impose such a requirement in AB 1054, and PG&E would have concerns about the effect of such a requirement on its ability to recruit talented executives.

Tying Long-Term Incentive Compensation To Safety Performance. PG&E supports "[b]asing a significant component of long-term incentive compensation on safety performance … as well as customer satisfaction, engagement, and welfare."[582] PG&E's executive compensation structure achieves this; as noted, the LTIP's performance metrics are based *entirely* on safety and customer satisfaction, engagement, and welfare (with a TSR overlay).

PG&E believes that executive compensation should be tied to the metrics it has proposed (which are heavily safety-focused, primarily outcome-based, and carefully constructed to achieve safety and other priorities while avoiding negative incentives), rather than separate Safety and Operational Metrics. PG&E has designed its executive compensation performance metrics from the standpoint of best practices for executive compensation in particular, and therefore believes that those metrics should be used.[583]

Annual Review Of Awards. PG&E supports the ACR's proposal for "[a]nnual review of awards by an independent consultant."[584] PG&E already uses an outside compensation consultant for this and other purposes, and the PG&E Corporation Compensation Committee uses its own independent consultant.[585]

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[581] *Id.*

[582] *Id.*

[583] *See* PG&E-01 at 7-3 – 7-7 (opening testimony of Mr. Lowe) (describing certain best practices as reflected in the Willis Towers Watson study that appears in TURN-X-09).

[584] ACR § 9, App'x A, at 9.

[585] *See* PG&E-01 at 7-7 – 7-8 (opening testimony of Mr. Lowe).

Reporting Of Awards To Commission. PG&E does not object to the ACR's proposal for "[a]nnual reporting of [executive compensation] awards to the CPUC through a Tier 1 advice letter."[586] PG&E notes, however, that its annual proxy statements already disclose such information.

Presumption Of Withholding Of Awards. PG&E supports the ACR's proposal for "[a] presumption that a material portion of executive incentive compensation shall be withheld if … PG&E is the ignition source of a catastrophic wildfire."[587] As noted, PG&E agrees that it can be appropriate to withhold a material portion of executive incentive compensation, including presumptively in cases in which the Utility is the ignition source of a catastrophic wildfire, provided that the presumption can be overcome based on consideration of the circumstances surrounding the fire (e.g., negligence versus non-negligence, questions about causation, and currently unforeseeable extenuating circumstances). Accordingly, although PG&E objects to TURN's proposal for an automatic withholding of incentive compensation in such circumstances, PG&E does not object to the presumption set forth in the ACR.

PG&E believes, however, that it should be the Board or the Compensation Committee, not the Commission, that determines whether the pertinent facts and circumstances overcome the presumption. PG&E believes that it is fundamentally the role of a corporate board to set compensation for the corporation's executives. As noted, the PG&E Boards historically have faithfully exercised their discretion in this area (e.g., eliminating all STIP awards for 2018). Moreover, PG&E would be concerned that ceding this role to an outside agency, in the current

[586] ACR § 9, App'x A at 9.

[587] *Id.* This support is subject to fleshing out key details, such as how one defines "catastrophic wildfire," who makes the determination about the ignition source, what to do in the event of disputes about the ignition source (e.g., if CalFire makes one determination but a jury makes another), what to do with potential incentive payments when the determination is pending, and how to determine causation when a third party plays a role in the ignition (e.g., if a car knocks over a non-negligently placed utility pole).

politically charged environment, could negatively impact PG&E's ability to recruit; it is uncommon for an outside agency to exercise such control over the executive compensation of a company, and the perceived uncertainty created by that arrangement would make it more difficult for PG&E to attract candidates for executive positions.[588] The Boards also are likely to have greater access to information than the Commission, in that disclosure of investigative facts to the Commission while the investigation is ongoing may not be feasible in the context of a catastrophic event.[589] For these reasons, PG&E believes that the discretion to withhold incentive compensation in the event of a catastrophic wildfire should continue to reside with the Board and the Compensation Committee.

Cancellations Of Severance Payments. The ACR proposes "[e]xecutive officer compensation policies [that] include provisions that allow for restrictions, limitations, and cancellations of severance payments in the event of any felony criminal conviction related to public health and safety or financial misconduct by the reorganized PG&E, for executive officers serving at the time of the underlying conduct that led to the conviction."[590] While PG&E agrees that severance payments may be withheld from an executive whose own misconduct led to a criminal conviction, PG&E does not agree with the ACR's proposal to restrict, limit, or cancel severance benefits in the event of *any* such criminal conviction for all "executive officers serving at the time of the underlying conduct that led to the conviction."[591]

PG&E's Executive Incentive Compensation Recoupment Policy allows recoupment of incentive compensation from any executive whose fraud or misconduct caused material financial

[588] *See* Appendix D: Declaration of John Lowe submitted herewith ("Lowe Decl."), ¶¶ 4-9.

[589] *See id.* ¶ 10.

[590] ACR § 9, App'x A at 9.

[591] *Id.*

or reputational harm to the company, as determined by the Compensation Committee or the Board of either the Utility or PG&E Corporation.[592] Similarly, PG&E's Officer Severance Policy precludes severance payments to any officer who was terminated for cause based on fraud or other serious misconduct.[593] The policies thus permit recoupment or withholding of payments based on misconduct only if the particular officer engaged in the misconduct—not if others within the company did so. This is common to the policies of many other major U.S. corporations, including other investor-owned utilities in California.[594] For example, Sempra Energy's policy allows for the recovery of incentive awards from any employee whose fraudulent or intentional misconduct materially affects the operations or financial results of the company.[595] PG&E is unaware of any public company that has ever adopted a policy to limit, cancel, or recoup severance based on a corporate criminal conviction without regard to the individual's involvement or culpability.[596]

Such a novel policy would create a serious risk of undermining PG&E's efforts to recruit and retain qualified executive leadership.[597] Specifically, by allowing for recoupment or cancellation of payments based on circumstances that are not tied to the individual's conduct, such a policy would render PG&E's compensation structure more unpredictable than those of

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[592] PG&E Corporation and Pacific Gas and Electric Company Executive Incentive Compensation Recoupment Policy (February 19, 2019), attached as Ex. 1 to the Lowe Declaration; *see also* Lowe Decl. ¶ 14.

[593] *See* PG&E Corporation Officer Severance Policy (May 12, 2014), attached as Ex. 2 to the Lowe Declaration; *see also* Lowe Decl. ¶ 16.

[594] *See* Lowe Decl. ¶ 18; Shearman & Sterling LLP, *Corporate Governance & Executive Compensation Survey* at 90 (2018), *available at* http://digital.shearman.com/i/1019978-2018-corporate-governance-survey/87?.

[595] Sempra Energy, 2019 Notice of Annual Shareholders Meeting and Proxy Statement at 73 (May 9, 2019), *available at* https://www.sempra.com/sites/default/files/content/files/node-page/file-list/2019/2019_proxy_sre.pdf.

[596] *See* Lowe Decl. ¶ 18.

[597] *See id.* ¶¶ 13, 19.

peer companies that use more standard recoupment policies.[598] The ACR recognizes that this policy should "take into account PG&E's need to attract and retain highly qualified executive officers."[599] PG&E's existing policy strikes the right balance between that goal and the need to hold executives accountable for their own misconduct.

Accordingly, PG&E supports a policy permitting restrictions, limitations, and cancellations of severance payments, but limited to individuals who personally engaged in misconduct that led to a criminal conviction, as well as other misconduct that causes harm to the company.

D. Structural Proposals (Scoping Memo § 3.1)

1. Regional Restructuring

As discussed above, PG&E has proposed that it prepare, and present in an application to the Commission, a regional restructuring plan. No party has opposed this, and a number of parties support it. PG&E submits that the detailed contours of such a regional restructuring are best addressed in the context of a proceeding devoted to that subject, and that the Commission's decision in this OII should simply require that such an application be made and set an appropriate time frame. Attempting to manage in advance, at this time, the staging of interim steps towards such a restructuring would be impractical and potentially impose unnecessary costs, as it would create the potential for a requirement to take steps that turn out to be at odds with the specifics of the restructuring plan that is ultimately devised.

2. Divestiture of Generation

The testimony submitted by the Joint Community Choice Aggregators (JCCA) recommends that the Commission develop a plan to phase out PG&E's retail electric generation

[598] *See id.* ¶ 19.

[599] ACR § 9, App'x A at 9.

service and the related procurement activities (Generation Divestiture).[600] PG&E takes no position at this time about the long-term potential for such a restructuring, but this issue plainly should not be part of the Commission's decision in this OII.

The JCCA do not contend that approval under AB 1054 requires a Generation Divestiture plan. And any such plan obviously raises a host of significant and difficult public policy issues, which are equally applicable to other utilities in the state. The JCCA incorrectly suggest that PG&E's Plan somehow precludes consideration of Generation Divestiture at a future date. The Plan does not do so. To the extent that JCCA reads the condition precedent regarding "disposition of proposals for certain potential changes to the Utility's corporate structure …" as encompassing possible Generation Divestiture, PG&E wishes to make clear that approval of the Plan does not foreclose future Commission consideration of these issues. Accordingly, the Commission should not address the Generation Divestiture issue at all in its decision in this OII.

3. Holding Company Structure

TURN recommends that the Commission decision in this OII either require elimination of the Utility's holding company, or require PG&E to make a compelling showing to the contrary.[601] However, TURN does not show that any such steps are necessary to comply with AB 1054. Indeed, it implicitly concedes the contrary: it asks that PG&E be required to make a showing regarding the benefits of the holding company, in this OII, "shortly after the company's exit from bankruptcy," i.e., by definition after the Plan has been found to satisfy AB 1054.

In any event, TURN's criticism of the holding company structure is unfounded. First, the holding company is an integral part of the capital that is being raised for exit financing under PG&E's Plan. Placing this potential restructuring under active consideration at this time could

[600] JCCA-01 at 14-15 (reply testimony of Mr. Beach).

[601] TURN-01 at 15:20-25 (reply testimony of Mr. Long).

jeopardize or complicate the efforts to raise necessary capital to emerge from bankruptcy and timely resolve the Chapter 11 proceeding. At a minimum, it would create an unnecessary distraction at an inopportune time. It also presents a host of complications, including planning a potential transfer of public shareholdings, and assignment or modifications of contracts.

Moreover, having a holding company provides an additional layer of flexibility in the capitalization of PG&E. For example, the ability to raise debt at PG&E Corporation provides cheaper access to capital than equity.

The holding company structure also provides longer term flexibility that the Commission may find useful in the future. It would be an effective avenue for PG&E to engage in unregulated businesses, with more transparency and a cleaner separation. It would facilitate paths to various types of potential restructurings that the Commission might want to consider in the future (e.g., separating out certain distributed generation businesses).

The holding company structure is overwhelmingly common in the utility sector, presumably because its usefulness is widely recognized. Contrary to TURN's suggestion that PG&E should be required to make a "compelling showing" to retain the holding company, it is TURN that should make a compelling showing of the purported need for such a change in direction.

In any event, this OII is not the time or place for such an inquiry, and the Commission's decision should not include any direction on the holding company structure issue.

E. Consistency With The State's Climate Goals (Scoping Memo § 3.3)

AB 1054 requires the Commission to "determine[] that the reorganization plan and other documents resolving the insolvency proceeding are … consistent with the state's climate goals as

required pursuant to the California Renewables Portfolio Standard Program and related procurement requirements of the state."[602]

PG&E has provided ample evidence that the Plan meets this standard. PG&E's Plan provides that the Utility will assume all power purchase agreements, renewable energy power purchase agreements, and CCA servicing agreements.[603] Those power purchase agreements include substantial commitments to future clean energy development; by assuming the agreements, PG&E furthers its long-term commitment to providing energy from renewable sources in furtherance of the State's climate goals.[604] Additionally, PG&E historically has satisfied and even surpassed applicable RPS mandates, and stated that it is on track to meet the 60% by 2030 RPS procurement goal.[605] After emergence from bankruptcy, reorganized PG&E will continue in this stead and will comply with any future climate or procurement mandates issued by the Commission or the Legislature.[606] PG&E also has a history of partnership with the State on clean energy goals, energy efficiency (EE) initiatives, electric vehicle (EV) programs, and other policies and programs that enable clean electricity and gas service for customers.[607]

With one exception, parties do not dispute that PG&E's Plan is consistent with the state's climate goals.[608] In fact, the Natural Resources Defense Council (NRDC) served testimony solely to describe how PG&E's record of climate-supportive actions and support for future efforts "provides a compelling demonstration that the Plan is consistent with the state's climate

[602] Pub. Util. Code § 3292(b)(1)(D).

[603] PG&E-01 at 9-20:15–28.

[604] *Id.*

[605] *Id.* at 9-1, 9-17.

[606] *Id.* at 9-1, 9-20:5–14.

[607] *Id.* at 9-1, 9-3–9-16; *see especially* 9-10:28–9-15:8.

[608] *See* CCSF-01 at 2:13–15 (noting the climate requirement of Section 3292(b)(1)(D) and not disputing that PG&E's Plan meets that requirement); CLECA-01 at 1:16–17 (similar); TURN-01 at 3:6 (similar).

goals."[609] NRDC explained that PG&E satisfies the climate provision of AB 1054 because the Plan is consistent with the RPS program and because PG&E has a clear pattern of consistency with other programs related to the State's climate goals.[610] NRDC confirmed that "PG&E has a demonstrated history of support for California's climate goals, policies, and initiatives," including a "leadership role … in providing early and consistent support for climate legislation" and a record of "support[] of federal climate policy, which amplifies the impact and lowers the cost of California's policies and programs."[611] NRDC further emphasized that "PG&E's performance" on RPS requirements "has been exemplary": In fact, "PG&E's record of early action which exceeded the RPS requirements has provided the state with additional benefits that go beyond the immediate requirements of the RPS."[612] NRDC also noted that PG&E is assuming all renewable power purchase agreements and community choice servicing agreements under the Plan.[613] Similarly, the Joint CCAs stated they "acknowledge and appreciate PG&E's strong and continuing support for California's ambitious climate goals," even as they also commented that PG&E's participation in electric procurement is not necessary to meet State climate goals.[614]

Small Business Utility Advocates (SBUA) also does not dispute that the Plan is consistent with the state's climate goals.[615] Separately, however, SBUA argues that PG&E

[609] NRDC-01 at 3:23–25.

[610] NRDC-01 at 2:11–15.

[611] NRDC-01 at 2:19–3:2.

[612] NRDC-01 at 3:4–15.

[613] NRDC-01 at 3:21–22.

[614] JCCA-01 at 15:11–12 (noting that PG&E's participation in the electric procurement requirement is not essential to meet State climate goals).

[615] SBUA-01 at 14 ("PG&E has stated that it will continue to meet the requirements of Public Utilities Code section 3292(b)(1)(D) … SBUA does not present further testimony on the California Renewables Portfolio Standard Program and related procurement requirements").

should specifically remediate climate harms caused by wildfires.[616] As Jessica Hogle testified, PG&E has broad and robust climate-related policies and programs,[617] which are sufficient for AB 1054 purposes. Moreover, Ms. Hogle testified that "the best way to address greenhouse gas emissions from wildfires is to prevent wildfires from occurring."[618] To that end, the Plan and PG&E's testimony in this proceeding also support initiatives to mitigate wildfire risks going forward, such as PG&E's 2020 Wildfire Mitigation Plan and other improvements.[619]

Mr. Abrams is the only party who contends that PG&E's Plan does not meet the climate standard of AB 1054. Mr. Abrams argues the Plan fails that standard because it does not tie climate change adaptation metrics to "bottom-line financial metrics," like Return on Equity.[620] Mr. Abrams's view does not comport with the statute, which defines "consisten[cy] with the State's climate goals" based on compliance with procurement requirements. Nothing in the statute suggests that PG&E must implement an earnings adjustment mechanism based on climate change metrics. Moreover, Mr. Abrams fails to recognize that PG&E does track and report key climate metrics, not only to track procurement compliance but also to monitor clean energy power mix, GHG emissions, climate change resilience, and other measures of sustainability.[621] In any event, at bottom, Mr. Abrams does not and cannot dispute that PG&E has met applicable procurement requirements, including RPS, which meets the specific terms of the statute.

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[616] SBUA-01 at 17–19; *id.* at 14 (addressing this issue under the heading "Section 854 Compliance"). Mr. Abrams also raised this concern in cross-examination, though not in his opening testimony. Mar. 3, 2020 Tr. at 1156–1161 (cross-examination testimony of Mr. Abrams).

[617] Feb. 28, 2020 Tr. at 789–790 (cross-examination testimony of Ms. Hogle).

[618] *Id.*

[619] *See* PG&E-01, Chapter 6; *see especially* PG&E-01 at 6-4–6-9.

[620] Abrams-01 at 17 (reply testimony of Mr. Abrams).

[621] PG&E-01 at 9-8:1–25; PG&E-01 at 9-17:7–14; Mar. 3, 2020 Tr. at 1159:26–1160:7, 1161:7–1161:16 (cross-examination testimony of Mr. Wyspianski).

F. Section 854: Improved Quality Of Service And Management And Fairness To Employees (Scoping Memo §§ 3.4, 3.5)

The non-financial criteria from Public Utilities Code Section 854 include whether the Plan "[m]aintain[s] or improve[s] the quality of service to public utility ratepayers in the state," "[m]aintain[s] or improve[s] the quality of management of the resulting public utility doing business in the state," and is "fair and reasonable to affected public utility employees, including both union and nonunion employees."[622] PG&E's Plan satisfies these criteria: Emergence pursuant to PG&E's Plan will allow PG&E to continue its ongoing efforts to improve the safety and reliability of service to customers, including through empowerment of safety leadership, efforts to decrease the impact of PSPS events, a focus on customer welfare, development of a regionalization plan, and capital investments to PG&E's system.[623] PG&E's Plan also improves the affordability of service by passing interest savings through to customers.[624]

No party has put forth evidence indicating that PG&E's emergence pursuant to PG&E's Plan would not at least maintain, if not improve, the quality of service to customers. SBUA's testimony suggests that PG&E must commit to maintaining existing programs that are beneficial to small and medium businesses (SMBs) for a period of five years in order to satisfy the criteria of Section 854.[625] However, it provides no evidence that the quality of service to SMBs will decline absent such a commitment, much less the quality of service overall. Mr. Johnson testified that he does not expect any diminishment or weakening of services to SMBs to result from the reorganization.[626]

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[622] Pub. Util. Code § 854(c)(2)-(4).

[623] PG&E-01 at 12-2 – 12-3 (opening testimony of Mr. Kenney).

[624] *Id*. at 12-3 (opening testimony of Mr. Kenney).

[625] SBUA-01 at 16 (reply testimony of Mr. Howard).

[626] Feb. 26, 2020 Tr. at 218 (cross-examination testimony of Mr. Johnson).

PG&E has also demonstrated that PG&E's emergence under its Plan will improve the quality of the Utility's management, based on key changes to the Utility's senior executives and management and robust oversight by the Boards and independent advisors.[627] SBUA's testimony suggests that PG&E must identify a Board committee with specific oversight responsibility for SMBs and revise its skills matrix to ensure that the Boards include members with experience serving SMBs.[628] Again, however, SBUA does not show that the quality of management will decline in the absence of those actions. Moreover, PG&E has sought to ensure that its Boards possess experience in serving all customers, including small businesses.[629]

PG&E's Plan is also fair to PG&E's employees, because it provides for the assumption of various existing agreement with union and non-union employees, including collective bargaining agreements and the employee benefit plans governing employees.[630] PG&E's Plan also incorporates an agreement with the International Brotherhood of Electrical Workers (IBEW) to extend and enhance the IBEW collective bargaining agreements for the benefit of those employees, as well as the overall enterprise.[631] Tom Dalzell, on behalf of CCUE, testified that that agreement is in the best interests of "customers, employees, shareholders, and the public," because it will "produce a stable workforce that can focus on the hard work which lies ahead."[632]

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[627] PG&E-01 at 12-3 – 12-4 (opening testimony of Mr. Kenney); *id.* at 5-23 – 5-30 (opening testimony of Mr. Vesey) (describing PG&E's embrace of independent oversight of safety and risk, including the ISA and ISOC; the NorthStar Report; the Federal Monitor, as well as an Independent Advisor that may be appointed following the monitorship; and independent wildfire safety auditing).

[628] SBUA-01 at 16 (reply testimony of Mr. Howard).

[629] Feb. 28, 2020 Tr. at 727 (cross-examination testimony of Ms. Brownell) (explaining that the "large-scale customer experience" included in the Skills Matrix meant "major customer-facing experience, could be small business, could be the big industrials that are also represented here").

[630] PG&E-01 at 12-4 (opening testimony of Mr. Kenney); PG&E's Plan §§ 8.5, 8.6, 1.29, 1.118 [3/9 Plan §§ 8.5, 8.6, 1.30, 1.123].

[631] PG&E-01 at 12-4 (opening testimony of Mr. Kenney); PG&E's Plan Exh. B.

[632] CCUE-01 at 4 (reply testimony of Tom Dalzell); *see also* Mar. 4, 2020 Tr. at 1259 (cross-examination testimony of Mr. Dalzell) (Q. Would it be correct to assume that your strategy in dealing with the PG&E bankruptcy has been to prioritize the common interests of the entire 12,000 members? A. I think so.).

In addition, PG&E will fully comply with the worker protections that apply to PG&E under Public Utilities Code Section 854.2.

V. REQUEST FOR COMMISSION DETERMINATIONS AND AUTHORIZATIONS

Pacific Gas and Electric Company (PG&E) requests that the Commission's decision:

1. Determine that PG&E's Plan and other documents resolving the insolvency proceeding "including [its] resulting governance structure," are approved as "acceptable in light of [its] safety history, criminal probation, recent financial condition, and other factors deemed relevant by the [Commission]." Pub. Util. Code § 3292(b)(1)(C).

2. Determine that PG&E's Plan and other documents resolving the insolvency proceeding are "consistent with the state's climate goals as required pursuant to the California Renewables Portfolio Standard Program and related procurement requirements of the state." Pub. Util. Code § 3292(b)(1)(D).

3. Determine that PG&E's Plan and other documents resolving the insolvency proceeding are "neutral, on average to the ratepayers of the electrical corporation." Pub. Util. Code § 3292(b)(1)(D).

4. Determine that PG&E's Plan and other documents resolving the insolvency proceeding do not require "contributions of ratepayers" pursuant to Public Utilities Code Section 3292(b)(1)(E).

5. Determine that the executive incentive compensation structure PG&E has presented in this proceeding is "structured to promote safety as a priority and to ensure public safety and utility financial stability with performance metrics, including incentive compensation based on meeting performance metrics that are measurable and enforceable, for all executive officers." Pub. Util. Code § 8389(e)(4).

6. Determine that PG&E has established a compensation structure for any new or amended contracts for executive officers, as defined in Section 451.1, that is based on the principles set forth in Public Utilities Code Section 8389(e)(6).

7. Reaffirm the November 27, 2019 Administrate Law Judge's Ruling On Public Utilities Code Section 854 that PG&E's Plan is exempt from review under Public Utilities Code Section 854 pursuant to Public Utilities Code Section 853(b).[633]

8. Approve PG&E's proposed capital structure adjustments as acceptable because they accurately measure the amounts of debt and equity that are financing rate base by removing the impacts of financing wildfire claims and the Wildfire Fund on the ratemaking capital structure. Specifically, in determining the ratemaking capital structure, authorize PG&E to:

[633] Administrative Law Judge's Ruling on Section 854 (Nov. 17, 2019) at 1, 5-6.

a. Exclude the after-tax charge related to the amortization of PG&E's initial and subsequent contributions to the Wildfire Fund;

b. Exclude the $6 billion in Temporary Utility debt used to fund payment of wildfire claims;

c. Exclude the after-tax charge to equity resulting from wildfire charges;

d. Exclude from the ratemaking capital structure the conventional and securitized debt used to fund certain wildfire mitigation capital expenditures that are precluded from earning a return on equity, as provided for in Public Utilities Code Section 8386.3(e).

9. Approve PG&E's proposal for updating its cost of debt authorized in D.19-12-056 and find that the following financing fees and costs, estimated by PG&E as approximately $154 million in total, and subject to update in the advice letter described below to reflect the actual costs incurred (which may be incurred upon approval by the bankruptcy court of PG&E's motion for approval of debt financing commitment letters or in connection with issuing the exit financing), are reasonable and should be recovered and amortized, including:

a. Approximately $26 million in typical underwriting fees on new PG&E long-term debt (excluding fees on the $6 billion of Temporary Utility debt and the debt used for PG&E's contributions to the Wildfire Fund);

b. Approximately $4 million in other issuance fees (including typical issuance costs, such as rating agency, Commission, SEC, and legal fees (excluding fees on the $6 billion of Temporary Utility debt and the debt used for PG&E's contributions to the Wildfire Fund));

c. Up to $106 million under the terms of the Noteholder RSA as necessary to achieve the interest rate cost savings for the benefit of customers; and

d. Approximately $18 million in fees on the Bridge Facility (excluding any fees on the $6 billion of Temporary Utility debt and the debt used for PG&E's contributions to the Wildfire Fund);

10. Authorize PG&E, to the extent necessary for inclusion in the update to PG&E's authorized cost of debt, to record the aforementioned financing-related costs in the memorandum account established in A.19-11-002, effective as of the date of PG&E's request—March 13, 2020;

11. Direct PG&E to file within 30 days of the Effective Date of PG&E's Plan a Tier 2 advice letter, with the updated authorized cost of debt to take effect as of the Effective Date of PG&E's Plan so that customers receive the full benefit of the lower cost of debt created by PG&E's Plan;

12. Direct PG&E, if consistent with the final decision in A.19-11-002, to include in the Tier 2 advice letter described above a showing regarding the reasonableness of any interest rate hedging costs incurred that it proposes to include in its updated cost of debt;

13. Authorize PG&E pursuant to Public Utilities Code Section 818 to issue, sell and deliver or otherwise incur one or more series of long-term debt securities described in the Noteholder RSA and on the terms described in that agreement (collectively, the "Noteholder RSA Debt Securities") in an aggregate principle amount not to exceed $11.85 billion;

14. Authorize PG&E pursuant to Public Utilities Code Section 818 to issue, sell and deliver or otherwise incur one or more series of long-term debt securities and term loans, such as first and refunding mortgage bonds under a mortgage trust indenture, debentures, notes, trust preferred securities, credit or loan agreements, and other evidences of indebtedness (collectively, "Long-Term Debt Securities") in an aggregate principal amount not to exceed $11.925 billion;

15. Authorize PG&E pursuant to Public Utilities Code Section 823 to issue, sell and deliver or otherwise incur working capital and various other types of short-term debt securities, including direct loans and other term loans, revolving credit facilities and letter of credit facilities, accounts receivable financing, commercial paper, and extendible commercial notes (collectively, "Short-Term Debt Securities") in an aggregate principal amount not to exceed $6 billion including the amount authorized by Public Utilities Code Section 823(c);

16. Authorize PG&E pursuant to Public Utilities Code Section 823 to issue, sell and deliver or otherwise incur various types of short-term debt securities, including direct loans, other term loans, and the Bridge Facility (collectively, "Additional Short-Term Debt Securities"), in an aggregate principal amount not to exceed $11.925 billion (not including the $6 billion short-term debt request or the amount authorized by Public Utilities Code Section 823(c)) in order to temporarily finance PG&E's exit from Chapter 11 which, in the event this authorization is used, any such short-term debt would be subsequently refinanced in connection with the requested $11.925 billion long-term debt request or in connection with PG&E's contemplated post-emergence securitization transaction (with such Noteholder RSA Debt Securities, Long-Term Debt Securities, Short-Term Debt Securities, and Additional Short-Term Debt Securities, collectively, as "Debt Securities");

17. Authorize PG&E to arrange credit agreements or other credit facilities as may be necessary for the purpose of issuing the Debt Securities as set forth in or contemplated by PG&E's testimony and other documents filed with the Commission in connection with this proceeding and to modify such credit facilities in the manner set forth without further authorization from the Commission;

18. Authorize PG&E to guarantee the securities of regulated direct or indirect subsidiaries or affiliates of PG&E (such subsidiaries and affiliates generally referred to herein as "affiliates") or of governmental entities that issue securities on behalf of PG&E and to

enter a performance guaranty in connection with transactions involving accounts receivable facilities in which PG&E does not act as servicer;

19. Authorize PG&E pursuant to Public Utilities Code Section 851 to pledge or otherwise dispose of or encumber utility property in order to secure the Debt Securities authorized herein by (i) a mortgage on PG&E's property, including by issuing collateral mortgage bonds or first mortgage bonds, (ii) a pledge or sale of PG&E's accounts receivable and/or (iii) a lien on PG&E's property or another credit enhancement arrangement;

20. Authorize PG&E to execute and deliver an indenture or supplemental indenture in connection with any issuance of Debt Securities hereunder and to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property in connection with the issuance and sale of secured debt securities; provided that any such encumbrance of utility property, to the extent it is undertaken as credit enhancement for the primary obligation, shall not be counted against the amounts authorized herein.

21. Authorize PG&E to issue, sell, and deliver Debt Securities by public offering or private placement, including pursuant to and on the terms described in the Noteholder RSA and the Bridge Facility;

22. Authorize PG&E pursuant to Public Utilities Code Section 823(d) to use a portion of the Noteholder RSA Debt Securities and the Long-Term Debt Securities to refund short-term debt;

23. Provide that PG&E may utilize at its discretion certain debt enhancement features, including but not limited to credit enhancements and redemption provisions;

24. Provide that the financing authority granted shall be effective upon issuance of the Commission's decision and that, consistent with D.02-11-030, PG&E shall pay the fees, if any, prescribed by Sections 1904 and 1904.1 of the Public Utilities Code within 60 days of issuing any Debt Securities;

25. Confirm that PG&E shall report to the Commission all of the information required by G.O. 24-C for any instruments issued by PG&E pursuant to this decision and that PG&E may report this information on a semiannual basis;

26. Confirm that no advanced approval from the Commission is required for PG&E Corporation to issue debt that is secured by a pledge of PG&E stock (or, in the alternative, grant any authorizations the Commission deems necessary in connection with such a transaction); and

27. Grant such additional authorizations or further relief to PG&E with respect to the requests and authorizations sought herein as the Commission may deem appropriate.

28. Grant any additional authorizations or further relief necessary to consummate PG&E's Plan.

VI. CONCLUSION

Based on the foregoing and the full record in this OII, PG&E respectfully requests that the Commission approve the PG&E Plan as being in the public interest, find that PG&E has satisfied the Plan-related requirements of AB 1054, and grant authorization for the related financings and capital structure.

Dated: March 13, 2020

Respectfully Submitted,

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APPENDIX A:
ENHANCED OVERSIGHT AND ENFORCEMENT PROCESS (ACR § 10)

Preamble: In order to constitute a "triggering event" in the Process, any action, event, or conduct by PG&E, including violation of laws or regulations and any incident causing the destruction of property, must occur after the Effective Date of PG&E's Plan.	• PG&E recommends adding a preamble to clarify that triggering events are limited to those occurring after the Effective Date of PG&E's Plan.
Enhanced Reporting	
Step 1: Enhanced Reporting	
A. Triggering Events i. PG&E fails to obtain an approved wildfire mitigation plan or fails in any material respect to comply with its regulatory reporting requirements. ii. PG&E fails to comply with, or has shown insufficient progress toward, any of the metrics (1) set forth in its approved wildfire mitigation plan including Public Safety Power Shutoffs (PSPS) protocols, (2) resulting from its on-going safety culture assessment, or (3) ~~related to other specified safety performance goals~~ otherwise contained within the approved Safety and Operational Metrics. iii. PG&E demonstrates insufficient progress toward approved safety or risk- driven investments related to the electric and gas business as defined in the approved Safety & Operational Metrics. iv. PG&E (or PG&E Corporation) fails in any material respect to comply with ~~the Commission's requirements and conditions for approval of its emergence from bankruptcy~~ its commitments to implement the ACR proposals, as memorialized in its Plan Supplement and other submissions to the Bankruptcy Court.	• As to A(ii) and (iii), PG&E supports using compliance with the Safety and Operational Metrics, rather than other performance metrics, as a trigger for Step 1. • As to A(iv), PG&E recommends specifying that the applicable trigger for Step 1 is failure to comply with PG&E's commitments to implement the ACR proposals, as adopted and modified by the Commission.

B. Actions During Step 1 i. PG&E will submit a Corrective Action Plan within twenty days of the earlier of the date on which (1) PG&E reports to the Commission demonstrating that any Step 1 triggering event has occurred (which report shall be made no later than five business day after the date on which any member of senior management of PG&E becomes aware of the occurrence of a Step 1 triggering event) or (2) the Commission staff notifies PG&E in writing that any Step 1 triggering event has occurred and is continuing. ii. The Corrective Action Plan shall be designed to correct or prevent a recurrence of the Step 1 triggering event, or otherwise mitigate an ongoing safety risk or impact, as soon as practicable and ~~include an attestation~~ be approved by the Chief Risk Officer. iii. The Corrective Action Plan, including any timeframes set forth therein for the correction of the triggering events or mitigation of any ongoing safety risk or impact, shall be approved by the Commission or the Executive Director. iv. Commission staff will monitor PG&E's compliance with its Corrective Action Plan based on, among other things, existing or enhanced reporting. v. The CRO, the ~~Safety Subcommittee~~SNO Committee[634], and the boards of directors shall provide reporting to the Commission as directed.	• As to B(ii), PG&E recommends that the corrective action plan be approved by the Chief Risk Officer. It is not clear what is meant by an "attestation" by such officer. • As to B(v), and other sections of the ACR assigning functions to the safety subcommitee, PG&E recommends that the SNO Committee's role be expanded, rather than creating a new safety subcommittee. References in this Appendix to the SNO Committee refer to the SNO Committee of the Utility.

[634] Alternatively, if the Commission determines that the Safety Subcommittee of the Executive Committee, rather than the SNO Committee, should undertake this responsibility, then that body would have such authority. This comment applies to all references to the SNO or Safety Subcommittee in the Process.

C. Performance that Results in Exit from Step 1 i. PG&E~~'s~~ shall exit from Step 1 of the Process ~~would be confirmed by~~ if the Commission's Executive Director finds that PG&E adequately implemented ~~upon meeting~~ the conditions of its Corrective Action Plan or adequately addressed all triggering events within the required timeframe. ii. The Commission's Executive Director will move PG&E to Step 2 if it fails to adequately meet the conditions of its Corrective Action Plan within the required timeframe~~.~~, provided that PG&E may remain in Step 1 if it demonstrates sufficient progress toward meeting the conditions of its Corrective Action Plan and additional time appears needed to successfully address the triggering event(s).	• As to C(i), PG&E recommends allowing exit if either PG&E implements the corrective action plan or addresses all triggering events. This comment applies to exit from other steps of the Process.
Step 2: Commission Oversight of Management and Operations	
A. Triggering Events i. The Commission's Executive Director makes a determination to move PG&E to Step 2, as provided in Step 1, Section C (ii) above. ii. A gas or electric incident occurs that results in the destruction of 1,000 or more dwellings or commercial structures and that the Commission determines ~~appears to have~~ resulted from PG&E's failure to follow Commission rules or orders or prudent management practices. iii. PG&E fails to comply with electric reliability performance metrics, including ~~standards to be developed for intentional de-energization events (i.e., PSPS)~~approved Safety and Operational Metrics relating to PSPS. iv. PG&E fails to report to the Commission a systemic electric or gas safety issue.	• As to A(ii), PG&E recommends providing that gas or electric incidents must have occurred after the Effective Date of PG&E's Plan to serve as triggering events. PG&E also recommends that the Commission must determine that such an incident resulted from the specified failures, as in Step 4.A(iii), because the language of "appears to have resulted" is vague. • As to A(iii), PG&E recommends using compliance with the Safety and Operational Metrics, rather than other standards, as a trigger.

B. Actions During Step 2 i. PG&E will submit a Corrective Action Plan, or updated Corrective Action Plan, within twenty days of the earlier of the date on which (1) PG&E reports to the Commission demonstrating that any Step 2 triggering event has occurred (which report shall be made no later than five business day after the date on which any member of senior management of PG&E ~~becomes aware~~ has actual knowledge of the occurrence of a Step 2 triggering event) or (2) the Commission staff notifies PG&E in writing that any Step 2 triggering event has occurred and is continuing. ii. The Corrective Action Plan shall be designed to correct or prevent a recurrence of the Step 2 triggering event, or otherwise mitigate an ongoing safety risk or impact, as soon as practicable and ~~include an attestation~~ shall be approved by the Chief Risk Officer and the~~ Safety Subcommittee~~ SNO Committee. iii. The Corrective Action Plan, including any timeframes set forth therein for the correction or prevention of the Step 2 triggering events or mitigation of any ongoing safety risk or impact, shall be approved by the Commission or the Executive Director. iv. Commission staff will monitor PG&E's compliance with its Corrective Action Plan based on, among other activities, increased inspections related to the triggering event and~~,~~ quarterly reports, and, to the extent applicable, shall conduct spot auditing of General Rate Case, Wildfire Expense Memorandum Account, Catastrophic Events Memorandum Account, or Pipeline Safety Enhancement Plans accounts in which approved investments in wildfire mitigation~~,~~ or electric or gas safety are auditable. v. ~~The Safety Subcommittee~~A representative of the SNO Committee and the CRO shall appear quarterly before the Commission to report progress on the Corrective Action Plan and provide additional reporting as directed.	• As to B(i), PG&E recommends clarifying that the timeline for reporting is triggered by actual knowledge of the triggering event.

C. Performance that Results in Exit from Step 2 i. The Commission's Executive Director will confirm PG&E's exit from Step 2 of the Process when he/she determines the company has met the conditions of its Step 2 Corrective Action Plan or adequately addressed all triggering events within the required timeframe. The Commission's Executive Director may determine that PG&E will move back to Step 1 of the Process rather than exit the process if the Executive Director determines that PG&E has made sufficient progress in meeting its Step 2 Corrective Action Plan but continued enhanced reporting is needed. ii. The Commission~~'s Executive Director~~ will move PG&E to Step 3 if a. PG&E fails to adequately meet the conditions of its Corrective Action Plan, and b. the ~~Executive Director~~ Commission determines that additional time in Step 2 is not likely to result in the effective implementation of its Corrective Action Plan.	
Enhanced Enforcement	
Step 3: Appointment of Independent Third-Party Monitor	
A. Triggering Events i. The Commission~~'s Executive Director~~ makes a determination to move PG&E to Step 3, as provided in Step 2, Section C (ii). ii. PG&E fails to obtain or maintain its safety certificate as provided in AB 1054.	

B. Actions During Step 3 i. The Commission~~'s Executive Director~~ may appoint an independent third-party monitor or expand the authority of any Independent Advisor (Monitor) to oversee PG&E's operations and to work with senior management to develop and implement a Corrective Action Plan with reasonable timeframes to address the triggering event(s) as soon as practicable, but in no event shall the timeframes be less than 12 months. ii. The Monitor will provide active, external oversight of PG&E's implementation of its Corrective Action Plan. The Monitor will not have authority to make decisions on behalf of or otherwise bind PG&E. iii. The Monitor will have the authority to hire third-party safety and utility operations experts to assist it with its oversight obligations. While in Step 3, PG&E will annually submit to the Commission, via a Tier 2 advice letter, a proposed scope of work for the Monitor. PG&E shall issue a request for proposals to perform the scope of work (with any modifications thereto the Commission staff may direct), including a budget. PG&E shall select a winning bidder and shall submit its selection, and associated budget, to the Commission via a Tier 2 advice letter. Thereafter, PG&E shall submit the Monitor's proposed budget annually to the Commission via a Tier 2 advice letter. The contract between PG&E and the Monitor may provide that the Monitor shall not bill amounts in excess of such approved budget. PG&E shall pay for all costs and expenses associated with the Monitor without cost recovery. iv. Senior management must work jointly with the Monitor to develop and implement a Corrective Action Plan including reasonable timeframes (which timeframes shall be acceptable to the Commission). The Corrective Action Plan shall be ~~certified~~ approved by the Monitor and by the SNO Committee. v. PG&E may request the ~~Monitor~~ Commission to modify the Corrective Action Plan but must	• As to B(i), PG&E recommends minimum time periods between Steps 3 through 6. • As to B(ii), PG&E recommends that the Process make explicit that the Monitor does not have authority to make decisions on behalf of or otherwise bind PG&E. • As to B(iii), PG&E recommends that the Process provide for a procedure by which PG&E and the Commission may establish a scope of work and budget for the Monitor. • As to B(iv), it is unclear what "certified" means, and PG&E thus recommends that the corrective action plan by approved by the Monitor. • As to B(v), PG&E recommends that the Commission be specifically authorized to modify the corrective action plan.

otherwise implement the plan as approved by the Monitor. vi. The Monitor will provide quarterly reports to the Commission and to PG&E's board of directors on the progress towards implementing the Corrective Action Plan. vii. The CRO and ~~Safety Subcommittee~~ SNO Committee will provide reporting to the Commission as required during this Step.	
C. Performance that Results in Exit from Step 3 i. PG&E~~'s~~ shall exit from Step 3 ~~will be confirmed by the Commission's Executive Director~~ if PG&E meets the conditions of its Step 3 Corrective Action Plan or adequately addresses all triggering events within the required timeframe. The Commission~~'s Executive Director~~ may determine that PG&E must remain in Step 1 or 2 for additional time after it confirms that PG&E has exited Step 3. ii. The Commission~~'s Executive Director~~ will move PG&E to Step 4 if ~~any of the following occurs:~~ PG&E fails to implement the Corrective Action Plan within the timeframes required by the Monitor ~~or the Commission's Executive Director~~, provided, however, that the Commission may allow PG&E to remain in Step 3 if it determines that PG&E has shown sufficient progress toward meeting the Corrective Action Plan and additional time appears likely to result in an adequate implementation of the Corrective Action Plan. a. ~~The Commission's Executive Director determines that additional enforcement is necessary because of PG&E's systemic non-compliance or poor performance with its Safety and Operational Metrics over an extended period of time~~. [*moved to Step 4, Section A(vi) below*]	• As to C(ii), PG&E recommends allowing the Commission discretion to determine that PG&E should remain in Step 3 based on sufficient progress toward its corrective action plan. • PG&E recommends that, as a drafting matter, the separate trigger of a determination that additional enforcement is necessary be moved to the section of Step 4 triggering events, below.

Step 4: Appointment of a Chief Restructuring Officer	
A. Triggering Events i. The Commission's Executive Director makes a determination to move PG&E to Step 4, as provided in Step 3, Section C (ii). ii. The Commission determines through an Order to Show Cause, Order Instituting Investigation, or other appropriate process, that PG&E repeatedly violated its regulatory requirements, committed gross negligence, or committed a serious violation of the law, such that ~~these violations~~ such conduct in the aggregate represents a threat to public health and safety. iii. PG&E causes an electric or gas safety incident that results in the destruction of 1,000 or more dwellings or commercial structures and the Commission determines through an Order to Show Cause, Order Instituting Investigation, or other appropriate process, that such event results from the willful misconduct or repeated and serious violations of Commission rules, orders or regulatory requirements. iv. The Commission determines through an Order to Show Cause, Order Instituting Investigation, or other appropriate process that additional enforcement is necessary because the wildfire fund administrator has made a determination following a covered wildfire that PG&E is ineligible for the cap on reimbursement because its actions or inactions that resulted in a covered wildfire constituted conscious or willful disregard of the rights and safety of others. v. PG&E failed to obtain or maintain its safety certificate as provided in AB 1054 for a period of three consecutive years. vi. The Commission~~'s Executive Director~~ determines that additional enforcement is necessary because of PG&E's systemic non-compliance ~~or poor performance~~ with its Safety and Operational	• As to A(ii), PG&E recommends replacing "these violations" with "such conduct" in order to encompass not just violations (of regulatory requirements or law) but also gross negligence. • As to A(vi), PG&E recommends omitting "poor performance" with Safety and Operational Metrics as a trigger because that term is vague.

Metrics over an extended period of time. [*moved from Step 3, Section C(ii)(b) above*]	
B. Actions During Step 4 i. The Commission will require that PG&E retain a chief restructuring officer from a list of qualified candidates identified by a third-party. The chief restructuring officer will have full management responsibility for developing and directing PG&E to implement the Corrective Action Plan with reasonable timeframes to address the triggering event(s) as soon as practicable, but in no event shall the timeframes be less than 12 months. ii. The chief restructuring officer will have the authority of an executive officer of PG&E and will report to the ~~Safety Subcommittee~~ SNO Committee on all safety issues. The chief restructuring officer will be subject to the oversight of PG&E's CEO, the Boards, and requirements of law. The chief restructuring Officer shall not be authorized to dispose of the operations, assets, business or stock of PG&E. iii. PG&E's senior management must work jointly with the chief restructuring officer to develop and implement a Corrective Action Plan including reasonable timeframes (which timeframes shall be acceptable to the Commission). iv. The chief restructuring officer will have all corporate authority that can be delegated to an officer under the California Corporate Code in order to ensure that PG&E can meet its Corrective Action Plan. v. The Corrective Action Plan must be certified by the chief restructuring officer. vi. PG&E must otherwise implement the Corrective Action Plan as certified by the chief restructuring officer. vii. The chief restructuring officer will provide quarterly reports to the Commission and to PG&E's board of directors on the progress towards implementing the Corrective Action Plan.	• As to B(ii), PG&E recommends making explicit that the chief restructuring officer would be subject to the oversight of PG&E's CEO and Boards, in order to clarify reporting relationships and to ensure compliance with legal requirements regarding Board governance. The Commission should also make explicit that the chief restructuring officer is not authorized to dispose of PG&E's operations, assets, business, or stock.

viii. The Chief Restructuring Officer will remain in place during Steps 5 and 6, if triggered.	
C. Performance that Results in Exit from Step 4 i. PG&E~~'s~~ shall exit from Step 4 ~~would be confirmed by the Commission's Executive Director~~ if it meets the conditions of its Step 4 Corrective Action Plan or adequately addresses all triggering events within the required timeframe. The Commission~~'s Executive Director~~ may determine that PG&E must remain in Steps 1, 2, or 3 for additional time after it confirms that PG&E has exited Step 4. ii. The Commission ~~through~~ will move PG&E to Step 5 if the Commission finds, through an Order to Show Cause or Order Instituting Investigation, that PG&E failed to implement the Corrective Action Plan within the timeframes required by the chief restructuring officer or the Commission. iii. PG&E may remain in Step 4 if after consultation with the chief restructuring officer the Commission ~~or the Executive Director~~ determines that additional time appears needed to successfully address the triggering event(s).	
Step 5: Appointment of a Receiver	
A. Triggering Events i. PG&E fails to implement its Step 4 Corrective Action Plan within the required timeframes, as provided in Step 4, Section ~~C~~B (i~~i~~).	

B. Process i. The Commission will pursue the receivership remedy subject to then applicable law of the state of California. If PG&E becomes the subject of a subsequent chapter 11 case, PG&E will agree not to ~~oppose~~ dispute the Commission's or state of California's authority to file a motion for the appointment of a chapter 11 trustee ~~if such a motion is filed by the Commission or the state of California~~ in such case, but would be able to contest whether the applicable legal standards for appointment of a receiver or a trustee have been satisfied. ii. The receiver, if appointed by the Superior Court, would be empowered to control and operate PG&E's business units in the public interest but not dispose of the operations, assets, business or PG&E stock.	• As to B(i), while PG&E agrees that it will not contest the Commission's authority to file suit pursuing a receivership or move to appoint a trustee, PG&E opposes a provision stating that it will not dispute whether the applicable standards for the appointment of a trustee or receiver have been met.
C. Performance that Results in Exit from Step 5 i. If the Commission determines that PG&E has corrected all of the Step 5 triggering events ~~and has remained in material compliance with Safety and Operational Metrics for a period of 18 months~~, the Commission may request termination of any receivership. ii. At any time while the receiver is in place and to the extent permitted by then applicable law, the Commission can initiate a Step 6 enforcement action if a Step 6 triggering event has occurred. iii. In the event that Commission seeks, but is not successful in obtaining a receiver, the Commission would determine whether PG&E shall remain in Step 4 or advance to Step 6.	• As to C(i), because the Process is focused on remedying specific triggering events, only some of which are based on the Safety and Operational Metrics, exit from the process should be a result of correcting triggering events (including through implementation of corrective action plans), rather than compliance with the Safety and Operational Metrics.

Step 6: Review of CPCN	
A. Triggering Events i. A receiver~~, or interim management (in the event that interim management is appointed or maintained because the appointment of a receiver has been denied)~~ appointed as set forth above has determined that continuation of Receiver Oversight will not result in restoration of safe and reliable service; provided, that such receiver~~, or interim management~~ shall have been a place for a period of at least ~~nine (9)~~twelve months before making such a determination. ~~ii. A court of applicable jurisdiction has denied the Commission's request for a receiver made as set forth above.~~ iii. PG&E fails adequately to address all of the Step 5 triggering events within 18 months of imposition of Step 5 and the Commission determines that additional time in Step 5 is unlikely to result in corrective action.	• As to A(i), PG&E opposes the proposal to appoint interim management, as the ACR does not define who would appoint interim management or how they would be selected in the event a request for appointment of a receiver is denied. • As to A(ii), PG&E opposes moving PG&E directly to Step 6 in the event a receivership is denied. If a court denies the application for a receiver, the Commission will not have met its burden to justify that remedy, and therefore further escalation would not be warranted. In addition, moving directly from Step 4 to Step 6 would exacerbate the lack of a minimum time period between steps.
B. Process i. The Commission will undertake this process subject to then applicable law of the state of California. ii. The CPUC will issue an order to show cause or Order Instituting Investigation to initiate Step 6.	

	iii. As a result of the order to show cause, the CPUC may place conditions on PG&E's CPCN or revoke PG&E's CPCN.	

APPENDIX B:

FINANCING AUTHORIZATIONS TESTIMONY EXCERPTS

PG&E HEARING ROOM EXHIBIT 1

I.19-09-016

PG&E's Plan of Reorganization OII 2019

Prepared Testimony - Volume 1 (Jan. 31, 2020)

Investigation: 19-09-016
(U 39 M)
Date: January 31, 2020
Witness(es): Various

PACIFIC GAS AND ELECTRIC COMPANY

PLAN OF REORGANIZATION OII 2019

PREPARED TESTIMONY

VOLUME 1

F. Financing Authorizations for Exit and Post-Emergence

In order for PG&E to consummate the exit financing and fund its Plan, the Utility needs authorization from the Commission pursuant to, *inter alia*, Pub. Util. Code §§ 818, 823 and 851 to issue the contemplated long-term and short-term debt. Specifically, PG&E requests authorization (1) to issue approximately $11.85 billion in long-term debt as contemplated by the Noteholder RSA and according to the terms described therein; (2) up to $11.925 billion[49] in additional long-term debt to finance PG&E's Plan and subsequent exit from Chapter 11, (3) up to $6 billion in short-term debt authority for the Utility's working capital and short-term debt needs for exit from Chapter 11 and on-going working capital and short-term needs and contingencies after exit; and (4) authorization of up to $11.925 billion in short-term debt to temporarily finance PG&E's exit from Chapter 11 which would be refinanced with the long-term debt already described in (2) and/or in connection with PG&E's anticipated request for a securitization transaction.

PG&E requests long-term and short-term debt authorization in this proceeding as opposed to a separate application given the direction in Administrative Law Judge Allen's December 27, 2019 Ruling Modifying Schedule. The December 27, 2019 Ruling stated that, "[b]ased on the understanding that the long-term debt at issue is integral to the plan of reorganization being considered in this proceeding, complies with all other requirements for issuance of debt, and does not require a separate financing order, PG&E should request approval of the long-term debt in this proceeding." December 27, 2019 Ruling at 4-5. While this direction pertained most immediately to long-term debt, as discussed further below, short-term debt authorization is equally critical to PG&E's exit financing and successful emergence from Chapter 11.

Requests (1), (2), and (4) described above relate directly to the contemplated exit financing for PG&E's Plan funding, amounting to up to $23.775 billion in new debt by the Utility (apart from the approximately

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[49] $11.925 billion is PG&E's current estimate and, to the extent this estimate changes based on any subsequent modifications to PG&E's Plan or other developments, PG&E may update or amend this request. This amount also includes $100 million for the refinancing of Pollution Control Bonds.

$9.575 billion in prepetition Utility debt that PG&E anticipates reinstating).[50] The anticipated uses of that long-term debt as part of PG&E's exit financing are reflected in Table 2.4 and discussed further below.

In addition to the request for PG&E's exit financing, PG&E also requests authorization for the Utility to incur up to $6 billion in short-term debt to fund increased short-term capital requirements and general working capital requirements, and in connection with potential contingencies. This represents a $2 billion increase to the Utility's $4 billion short-term debt authorization that was in place prior to its Chapter 11 filing. See D.09-05-002. PG&E anticipates exercising a portion of this authorization for the placement of short-term working capital facilities immediately upon the effectiveness of PG&E's Plan. First, a credit facility for general working capital, when PG&E emerges and no longer has access to the debtor-in-possession financing, is a critical factor for PG&E's credit ratings.

Second, PG&E's $6 billion short-term request would be available for potential post-emergence needs. Such needs and contingencies include:

- Finance under-collections in balancing accounts
- Delays in recovery of certain incurred costs
- Collateral posting requirements associated with the Utility's business and energy procurement activities
- Cyclical fluctuations in seasonal cash flows, or
- Other unexpected events.

Specifically, memorandum accounts typically allow cost recovery only after costs have been incurred and recorded into the accounts, and then subsequently approved by the Commission through an application. There can be a substantial period between when costs are incurred, and when those costs ultimately are recovered in rates. Such unrecovered balances are usually financed with short-term debt. In recent years the total amount of unrecovered balances in PG&E's memorandum accounts, the net under-collections in various balancing accounts, and the time delay between when costs are incurred and

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50 While PG&E's request in this proceeding concerns financing authorizations to enable PG&E to exit from Chapter 11 and to meet its short-term working capital needs and contingencies immediately upon emergence, PG&E also anticipates filing a separate request for long-term financing authorization to address PG&E's post-emergence long-term financing needs.

recorded and subsequently recovered in rates (if approved) have increased substantially, increasing PG&E's need for short-term debt authorization. Additionally, PG&E anticipates higher collateral posting requirements associated with PG&E's business and energy procurement activities when compared to pre-Chapter 11 filing.

Prior to PG&E's Chapter 11 filing, through D.04-10-037, as modified by D.05-04-023, D.06-11-006 and D.09-05-002, the Commission authorized PG&E to incur up to $4.0 billion of short-term debt[51] for working capital fluctuations and energy procurement-related purposes (including, without limitation, collateral posting requirements). In this proceeding, PG&E requests a total short-term debt authorization of up to $6 billion that would supersede its prior short-term debt authorizations. See D.04-10-037, *as modified by* D.05-04-023, D.06-11-006 and D.09-05-002. This total amount also is consistent with the total amount PG&E requested in A.18-10-003, which was filed on October 9, 2018 before PG&E filed for Chapter 11,[52] and is similar to the $2 billion increase for a total of $4 billion in short-term debt authorization recently granted to Southern California Edison. See D.19-09-008. Since PG&E's short-term debt request in this proceeding would supersede its prior authorizations, PG&E proposes to pay Commission fees on only the net difference in total authorization, i.e., $2 billion. See Exhibit 2.3 (showing prior authorizations) and 2.9 (calculating fees).

1. Description of the $11.85 Billion in Long-Term Debt Securities Contemplated by the Noteholder RSA

PG&E requests authorization for the Utility to issue, sell and deliver or otherwise incur approximately $11.85 billion in long-term debt consistent with the terms of the Noteholder RSA, as shown in Exhibits 2.5-2.7.[53] In particular, PG&E requests authorization for the following types of long-term

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51 Historically, the Commission has expressed PG&E's authorized short-term debt as an authorized amount including amounts allowed by Public Utilities Code § 823(c) (i.e., 5 percent of the par value of PG&E's outstanding long-term securities).

52 In a decision dated January 28, 2019 and issued January 30, 2019 in that proceeding, the Commission exempted PG&E's Debtor-In-Possession financing from Commission approval and closed that proceeding. See D.19-01-025; see *also* D.19-01-026.

53 *See* U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF 5519, n.7. The Noteholder RSA as executed (Exhibit 2.6) shows a total of approximately $11.95 billion. The correct amount, as reflected in PG&E's Plan, is $11.85 billion.

debt securities described below and on the terms described below (collectively, and together with the other long-term and short-term debt securities described below, "Debt Securities").

a. New Utility Funded Debt Exchange Notes

The Utility may issue, collectively, (1) $1,949 million in new senior secured notes bearing interest at the rate of 3.15 percent, maturing on the 66 month anniversary of the Effective Date of PG&E's Plan, and otherwise having the same terms and conditions as the Reference Medium-Term Senior Note Documents[54] shown in Exhibit 2.6; and (2) $1,949 million in new senior secured notes bearing interest at the rate of 4.50 percent, maturing on the anniversary of the Effective Date of PG&E's Plan in 2040, and otherwise having the same terms and conditions as the Reference Long-Term Senior Note Documents shown in Exhibit 2.7.[55]

b. New Utility Long-Term Notes

The Utility may issue, collectively, (i) $3.1 billion in new senior secured notes bearing interest at the rate of 4.55 percent, maturing on the anniversary of the Effective Date of PG&E's Plan in 2030, and otherwise having the same terms and conditions as the Reference Long-Term Senior Note Documents shown in Exhibit 2.7; and (ii) $3.1 billion in new senior secured notes bearing interest at the rate of 4.95 percent, maturing on the anniversary of the Effective Date of PG&E's Plan in 2050, and otherwise having the same terms and conditions as the Reference Long-Term Senior Note Documents shown in Exhibit 2.7.

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54 These reference documents are described in the Noteholder RSA as the "Reference Short-Term Senior Note Documents." They are referred to as Reference Medium-Term Senior Note Documents herein to minimize confusion since the term of the New Utility Funded Debt Exchange Notes is longer than one year, meaning they are considered long-term debt not short-term debt for purposes of the Public Utilities Code.

55 *See* U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF 5519, n.7. The Noteholder RSA as executed (Exhibit 2.6) shows $1,999 million as the amounts for the New Utility Funded Debt Exchange Notes. PG&E's Plan shows the correct amount of $1,949 million.

c. New Utility Medium-Term Notes[56]

The Utility may issue, collectively, (i) $875 million in new senior secured notes bearing interest at the rate of 3.45 percent, maturing on the anniversary of the Effective Date of PG&E's Plan in 2025, and otherwise having the same terms and conditions as the Reference Medium-Term Senior Note Documents shown in Exhibit 2.6; and (ii) $875 million in new senior secured notes bearing interest at the rate of 3.75 percent, maturing on the anniversary of the Effective Date of PG&E's Plan in 2028 and otherwise having substantially similar terms and conditions as the Reference Medium-Term Senior Note Documents shown in Exhibit 2.6.

2. Description of Long-Term Debt Securities for the Issuance of up to $11.925 Billion in Long-Term Debt for Exit

PG&E additionally requests authorization to issue, sell and deliver or otherwise incur up to $11.925 billion in long-term debt to finance PG&E's Plan and subsequent exit from Chapter 11. In connection with this request, PG&E seeks authorization to issue the various types of long-term debt securities described below (collectively, and together with the short-term debt securities described below, "Debt Securities").

a. Secured Debt Securities

PG&E and/or an affiliate may issue secured Debt Securities, which generally are expected to be first and refunding mortgage bonds under a mortgage trust indenture ("Trust Indenture"), but may include other forms of secured debt securities (collectively, "Secured Debt Securities"). Secured Debt Securities may be sold in one or more public offerings or in one or more private placements.[57] Secured Debt Securities may be sold to underwriters which in turn will offer the Secured Debt Securities to investors, or may be sold directly to

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56 These notes are described in the agreement with the Noteholder RSA as "New Utility Short-Term Notes." They are referred to as Medium-Term Notes herein to minimize confusion since their term is longer than one year, meaning they are considered long-term debt, not short-term debt, for purposes of the Public Utilities Code.

57 Bonds sold in private placements may contain provisions for subsequent public registration.

investors either with or without the assistance of a placement agent. Secured Debt Securities may also be delivered in connection with the issuance of other debt instruments as described in Section F.6. The offering of Secured Debt Securities may be registered with the Securities and Exchange Commission (SEC), depending on the method of offering and sale, and the Secured Debt Securities may be listed on a stock exchange. Because any such Secured Debt Securities would be an encumbrance on the Utility's utility properties under a Trust Indenture, as described further in Section F.5., PG&E requests authorization under Pub. Util. Code § 851 to mortgage and encumber utility property.

b. Unsecured Debt Securities

PG&E and/or an affiliate may issue unsecured Debt Securities as bonds, debentures, notes, trust preferred securities, or other evidences of indebtedness in one or more public offerings or in one or more private placements.[58] Unsecured Debt Securities (consistent with financial marketplace terminology, collectively referred to herein as "notes") would not be secured by specific properties of PG&E, but may be issued under trust indentures. Notes may be sold to underwriters which in turn will offer the unsecured Debt Securities to investors, or may be sold directly to investors either with or without the assistance of a placement agent. PG&E may also issue debentures or other unsecured Debt Securities directly or as part of an issuance of trust preferred securities. In such an issuance, PG&E may create a subsidiary in the form of a trust that would issue preferred securities to the public. The preferred securities would represent an interest in the debentures issued by PG&E to the trust and would also be guaranteed by PG&E. The offering of notes may be registered with the SEC, depending on the method of offering and sale, and the notes may be listed on a stock exchange.

58 Bonds sold in private placements may contain provisions for subsequent public registration.

c. Direct Loans

PG&E anticipates that from time to time it may be advantageous to borrow directly from financial institutions such as banks, insurance companies, or other financial lenders. PG&E and/or an affiliate generally would enter into such loans when the loans were designed to result in an overall cost of money lower than that available through the issuance of other forms of Debt Securities or when necessary as an interim arrangement or for other reasons. Such loans could be either secured (including through a first mortgage bond structure) or unsecured.

d. Accounts Receivable Financing

PG&E may obtain financing through the issuance of Debt Securities secured by a pledge, sale, or assignment of its accounts receivable. See Section VI.C. below for a discussion of accounts receivable financing in connection with PG&E's request for authority pursuant to Pub. Util. Code § 851.

3. Proposed Uses of Long-Term Debt Proceeds

Pub. Util. Code § 817 authorizes the issuance of long-term debt for specific purposes, including, *inter alia*, "(d) [f]or the discharge or lawful refunding of its obligations;" "(f) [f]or the reorganization or readjustment of its indebtedness or capitalization upon a merger, consolidation, or other reorganization;" "(g) [f]or the retirement of or in exchange for one or more outstanding stocks or stock certificates or other evidence of interest or ownership of such public utility, or bonds, notes, or other evidence of indebtedness of such public utility, with or without the payment of cash;" and "(h) [f]or the reimbursement of moneys actually expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness of the public utility, for any of the aforesaid purposes … ." Pub. Util. Code § 817(d), (f)-(h); see*, e.g.*, D.02-11-030 at 5-6.

As already detailed in Table 2.4, PG&E proposes to use the proceeds from the Utility's issuance of the long-term debt authorized in this

proceeding for the aforementioned purposes permitted by § 817 and any others, other than for payment of accrued interest, if any, and after payment or discharge of obligations incurred for expenses incident to their issue and sale. In connection with these proposed uses, PG&E also requests authorization pursuant to Pub. Util. Code § 823(d) to use a portion of the long-term debt requested herein to refund pre-petition short-term debt (as reflected in Table 2.4) and, if applicable, to refund the additional $11.925 billion short-term debt request described below in Section F.4.

4. Description of Short-Term Debt Securities for Exit and Post-Emergence

PG&E requests two different short-term debt authorizations.[59] First, PG&E requests authority to issue, sell and deliver or otherwise incur up to $6 billion in short-term debt authority for the Utility's working capital and short-term debt needs for exit from Chapter 11 and on-going working capital and short-term needs and contingencies after exit. Consistent with PG&E's prior short-term debt authorizations, see D.04-10-037, *as modified by* D.05-04-023, D.06-11-006 and D.09-05-002, and as described in greater detail below, PG&E requests authorization to issue various types of short-term debt securities, including direct loans, revolving credit facilities, term loan facilities and letter of credit facilities, accounts receivable financing, commercial paper, and extendible commercial notes. Credit facilities for these purposes may be established through several types of structures, the most typical being bank revolving loan (including Letters of Credit (LOC)) and term loan facilities, and customer accounts receivable financing. There are a variety of structures involving customer accounts receivable financing, including structures in which the receivables are the collateral against which borrowings or LOCs can be drawn, or the receivables are sold to a third party that then uses the receivables as collateral for borrowings and LOCs. In this latter structure, the transaction is structured as a true sale for bankruptcy purposes and debt for financial reporting and tax purposes. Credit facilities typically involve multi-year agreements. Since borrowings under these facilities are intended to manage variations in short-term cash

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59 See Exhibit 2.3 (showing the requested short-term debt authorization in excess of the amount allowed pursuant to Public Utilities Code § 823(c)).

flow, and not as a permanent source of financing for long-term assets such as rate base, consistent with past practice[60] PG&E proposes to treat all such borrowings as short-term debt for ratemaking purposes, which will be excluded from PG&E's ratemaking capital structure.

PG&E expects to implement one or more of the structures described in order to optimize the terms and amount of credit facilities and to ensure adequate short-term liquidity. Any such credit facilities could be secured or unsecured.

Second, to provide flexibility for the Utility's exit financing, PG&E requests authority for the Utility to issue, sell and deliver or otherwise incur up to $11.925 billion in short-term debt to temporarily finance PG&E's exit from Chapter 11 which, in the event this authorization is used, would be subsequently refinanced with the long-term debt already described in Section VI.B. or in connection with the rate-neutral securitization transaction.[61] Indeed, since PG&E will file a separate application seeking authorization for a rate-neutral, post-emergence securitization transaction, the proceeds of which would be used to refinance $6 billion of Utility debt used to pay wildfire claims and accelerate payment under the Plan of $1.35 billion owed to victims in 2021 and 2022, it may make sense for the Utility to initially use $6 billion in short-term, not long-term, debt for this purpose. Similarly, PG&E could use short-term as opposed to long-term debt should capital market conditions require the issuance of the former. Thus, approving this authorization for up to $11.925 billion in short-term debt in connection with PG&E's exit financing will provide helpful flexibility to adapt to the circumstances at exit.

To be clear, this short-term request for up to $11.925 billion would serve as a temporary replacement for the requested authorization of up to $11.925 billion in long-term debt (or the securitization transaction), such that the aggregate amount of debt under both authorizations requested herein (short-term and long-term) would not exceed $11.925 billion. PG&E further

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60 E.g., D.04-10-037 at 12.

61 As with PG&E's long-term debt request, this short-term debt authorization request may be updated or amended based on subsequent modifications to PG&E's Plan or other developments.

recognizes that, after funding its Plan and emerging, any portion of this $11.925 billion short-term request not used for its exit financing would lapse.

a. Direct Loans

PG&E anticipates that from time to time it may be advantageous to borrow directly from financial institutions such as banks, insurance companies, or other financial lenders. PG&E generally would enter into such loans only when the loans were designed to result in an overall cost of money lower than that available through the issuance of other forms of Debt Securities or when necessary to as an interim arrangement or for other reasons. Such loans could be either secured (including through a first mortgage bond structure) or unsecured.

b. Revolving Credit and Letter of Credit Facilities

PG&E may enter into revolving credit facilities and letter of credit facilities with financial institutions such as banks or other financial lenders. These facilities may be used to for direct borrowings, letter of credit issuance, or as a backstop for commercial paper, among other uses. Any such revolving credit and letter of credit facilities could be secured (including through a first mortgage bond structure) or unsecured.

c. Accounts Receivable Financing

PG&E may obtain financing through the issuance of Debt Securities secured by a pledge, sale, or assignment of its accounts receivable. See Section F.5. below for a discussion of accounts receivable financing in connection with PG&E's request for authority pursuant to Pub. Util. Code § 851.

d. Commercial Paper and Extendible Commercial Notes

If PG&E's credit rating sufficiently improves such that it can re-enter the commercial paper market, PG&E may issue Short-Term Debt Securities as commercial paper, including the refunding or rolling over of previously issued commercial paper. The commercial paper may be sold privately or publicly in the domestic or foreign capital markets. The commercial paper may be sold through placement agents which market commercial paper on a reasonable efforts basis or may be sold directly

to investors. Although it may issue commercial paper without separate liquidity support if possible and cost-effective to do so, PG&E anticipates it or an affiliate (acting at PG&E's direction) will arrange a credit agreement with banks or other financial institutions to provide liquidity support for the commercial paper indebtedness. PG&E or its affiliate may from time to time make modifications to the credit agreement terms and conditions. In addition, one or more new financial institutions may be added to or substituted for institutions initially participating in the credit agreement, and one or more of these institutions may be removed or have their respective percentage participation adjusted. At the expiration of the credit agreement, PG&E or its affiliate may renew or replace it. To the extent that commercial paper is backed by a credit facility, to avoid double counting the commercial paper and contingent support facilities associated with such paper, the commercial paper issued would be counted against available short-term debt authorization, and any supporting credit facility would not be counted against the authorization requested hereunder. The cost of commercial paper will include the effective yield plus any expenses associated with issuing commercial paper. These expenses include, but are not limited to, dealer commissions, issuing and paying agent fees, and credit agreement fees. PG&E may also issue extendible commercial notes, which are very similar to commercial paper but do not necessarily require the support of a credit agreement. Generally, the notes would be issued with a maturity of less than 364 days, but at maturity they may be extended for a period in excess of one year if not paid or remarketed. Nonetheless, and consistent with D.09-05-002, D.04-10-037 and D.00-04-057, extendible commercial notes would be treated for all purposes as short-term debt.

e. Bridge Facility

PG&E requests approval of its Bridge Facility in connection with its second short-term debt request described above. On October 11, 2019, PG&E entered into commitment letters with various banks, including JPMorgan Chase Bank, N.A., Bank of America, N.A., BofA Securities, Inc., Barclays Bank PLC, Citigroup Global Markets Inc., Goldman Sachs

Bank USA, and Goldman Sachs Lending Partners LLC, to provide a $27.35 billion senior secured bridge loan facility (the "Bridge Facility") to PG&E.[62] The Bridge Facility would be secured by substantially all of PG&E's assets and would mature 364 days after any funding of the facility. PG&E's obligations under the commitment letters remain contingent on Bankruptcy Court approval and, of course, any funding of the Bridge Facility would require authorization from the Commission as requested herein. In light of the subsequent amendments to PG&E's Plan in the intervening months and, in particular, the Noteholder RSA, PG&E has entered into a reduced Bridge Facility in the amount of $5.825 billion on comparable terms.[63] The Bridge Facility is committed financing, which funding provides significant certainty to PG&E even if debt market conditions deteriorate.

5. Section 851 Authorization For Secured Debt

PG&E requests authority under Pub. Util. Code § 851 to encumber utility property in connection with the short- and long-term debt securities already described. Specifically, PG&E requests authority to secure the aforementioned debt securities by (1) a mortgage on the Utility's property, including by issuing collateral mortgage bonds or first mortgage bonds; (2) a pledge of the Utility's accounts receivable, including related collateral pledged under accounts receivable facilities, such as (a) security interests securing payment of such accounts receivable, (b) guarantees, LOCs, LOC rights, supporting obligations, insurance and other agreements or arrangements supporting the payment of such accounts receivable, (c) service contracts and other agreements associated with such accounts receivable, (d) records related to such accounts receivable, and/or (e) proceeds of any of the foregoing; and/or (3) a lien on the Utility's property or another credit enhancement arrangement. With respect to accounts receivable financing, debt securities are secured by a pledge, sale, or assignment of the Utility's customer accounts receivable. PG&E anticipates

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62 See PG&E and PG&E Corporation, 8-K (Oct. 15, 2019).

63 See Exhibit 2.8. Depending on the circumstances, PG&E also could seek to increase the amount of the Bridge Facility up to the full amount of the $11.925 billion in requested short-term authorization.

that the transactions comprising an accounts receivable financing would be structured to be a true sale for bankruptcy purposes and debt for financial reporting and tax purposes, although other structures may be developed using accounts receivable as security or collateral. Should any such transaction be structured whereby the Utility does not act as servicer of the accounts receivable facility, PG&E may be required to enter a performance guaranty to serve as guarantor of the performance of the obligations of the servicer and hereby requests authorization to do so. The Utility also seeks authorization to execute and deliver one or more indentures or supplemental indentures, mortgages, security agreements, pledge agreements and such other collateral documents or instruments to secure the Debt Securities authorized by the Commission in this proceeding.

6. Features to Enhance Debt Securities

PG&E hereby requests authorization to include at its discretion one or a combination of the following additional features in PG&E or affiliate Debt Securities. Such features will be used as appropriate to improve the terms and conditions of the Debt Securities and to lower PG&E's overall cost of financing for the benefit of customers.

a. Credit Enhancements

PG&E may obtain credit enhancements for Debt Securities, such as LOCs, standby bond purchase agreements, surety bonds or insurance policies, or other credit support arrangements. Such credit enhancements may be included to reduce interest costs or improve other credit terms, and the cost of such credit enhancements would be included in the cost of the Debt Securities. PG&E may also provide mortgage security as a form of credit enhancement for Debt Securities. Debt used as credit enhancement would not count against the amount of debt authorized under this proceeding as long as there was no possibility that such credit enhancements would ever increase the amount of PG&E's debt obligations (see D.08-10-013).

b. Redemption Provisions

Each issue of Debt Securities may contain a provision allowing it to be redeemed or repaid prior to maturity. An early redemption provision

may allow the Debt Securities to be redeemed or repaid at any time, or it may allow the Debt Securities to be redeemed or repaid only after a certain period. In either case, the Debt Securities would be redeemable at par, at a premium over par, or at a stated price.

PG&E HEARING ROOM EXHIBIT 7

I.19-09-016

PG&E's Plan of Reorganization OII 2019

Supplemental Testimony including Errata
(Feb. 21, 2020)

Investigation: 19-09-016
(U 39 M)
Date: February 21, 2020
Witness(es): Various

PACIFIC GAS AND ELECTRIC COMPANY

PLAN OF REORGANIZATION OII 2019

SUPPLEMENTAL TESTIMONY INCLUDING ERRATA

recorded and subsequently recovered in rates (if approved) have increased substantially, increasing PG&E's need for short-term debt authorization. Additionally, PG&E anticipates higher collateral posting requirements associated with PG&E's business and energy procurement activities when compared to pre-Chapter 11 filing.

Prior to PG&E's Chapter 11 filing, through D.04-10-037, as modified by D.05-04-023, D.06-11-006 and D.09-05-002, the Commission authorized PG&E to incur up to $4.0 billion of short-term debt[51] for working capital fluctuations and energy procurement-related purposes (including, without limitation, collateral posting requirements). In this proceeding, PG&E requests a total short-term debt authorization of up to $6 billion that would supersede its prior short-term debt authorizations. See D.04-10-037, *as modified by* D.05-04-023, D.06-11-006 and D.09-05-002. This total amount also is consistent with the total amount PG&E requested in A.18-10-003, which was filed on October 9, 2018 before PG&E filed for Chapter 11,[52] and is similar to the $2 billion increase for a total of $4 billion in short-term debt authorization recently granted to Southern California Edison. See D.19-09-008. Since PG&E's short-term debt request in this proceeding would supersede its prior authorizations, PG&E proposes to pay Commission fees on only the net difference in total authorization, i.e., $2 billion. See Exhibit 2.3 (showing prior authorizations) and 2.9 (calculating fees).

1. Description of the $11.85 Billion in Long-Term Debt Securities Contemplated by the Noteholder RSA

PG&E requests authorization for the Utility to issue, sell and deliver or otherwise incur approximately $11.85 billion in long-term debt consistent with the terms of the Noteholder RSA, as shown in Exhibits 2.5-2.7.[53] In particular, PG&E requests authorization for the following types of long-term

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51 Historically, the Commission has expressed PG&E's authorized short-term debt as an authorized amount including amounts allowed by Public Utilities Code § 823(c) (i.e., 5 percent of the par value of PG&E's outstanding long-term securities).

52 In a decision dated January 28, 2019 and issued January 30, 2019 in that proceeding, the Commission exempted PG&E's Debtor-In-Possession financing from Commission approval and closed that proceeding. See D.19-01-025; see *also* D.19-01-026.

53 *See* U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF 5519, n.7. The Noteholder RSA as executed (Exhibit 2.65) shows a total of approximately $11.95 billion. The correct amount, as reflected in PG&E's Plan, is $11.85 billion.

debt securities described below and on the terms described below (collectively, and together with the other long-term and short-term debt securities described below, "Debt Securities").

a. New Utility Funded Debt Exchange Notes

The Utility may issue, collectively, (1) $1,949 million in new senior secured notes bearing interest at the rate of 3.15 percent, maturing on the 66 month anniversary of the Effective Date of PG&E's Plan, and otherwise having the same terms and conditions as the Reference Medium-Term Senior Note Documents[54] shown in Exhibit 2.6; and (2) $1,949 million in new senior secured notes bearing interest at the rate of 4.50 percent, maturing on the anniversary of the Effective Date of PG&E's Plan in 2040, and otherwise having the same terms and conditions as the Reference Long-Term Senior Note Documents shown in Exhibit 2.7.[55]

b. New Utility Long-Term Notes

The Utility may issue, collectively, (i) $3.1 billion in new senior secured notes bearing interest at the rate of 4.55 percent, maturing on the anniversary of the Effective Date of PG&E's Plan in 2030, and otherwise having the same terms and conditions as the Reference Long-Term Senior Note Documents shown in Exhibit 2.7; and (ii) $3.1 billion in new senior secured notes bearing interest at the rate of 4.95 percent, maturing on the anniversary of the Effective Date of PG&E's Plan in 2050, and otherwise having the same terms and conditions as the Reference Long-Term Senior Note Documents shown in Exhibit 2.7.

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54 These reference documents are described in the Noteholder RSA as the "Reference Short-Term Senior Note Documents." They are referred to as Reference Medium-Term Senior Note Documents herein to minimize confusion since the term of the New Utility Funded Debt Exchange Notes is longer than one year, meaning they are considered long-term debt not short-term debt for purposes of the Public Utilities Code.

55 *See* U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF 5519, n.7. The Noteholder RSA as executed (Exhibit 2.65) shows $1,999 million as the amounts for the New Utility Funded Debt Exchange Notes. PG&E's Plan shows the correct amount of $1,949 million.

APPENDIX C:

DECLARATION OF JASON P. WELLS

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

PLAN OF REORGANIZATION OII
I.19-09-016

DECLARATION SUPPORTING PACIFIC GAS AND ELECTRIC COMPANY'S COMMENTS ON THE ASSIGNED COMMISSIONER'S RULING

1. I, Jason P. Wells, am the Executive Vice President and Chief Financial Officer for PG&E Corporation.

2. I understand that the Assigned Commissioner's Ruling ("ACR") in this proceeding issued on February 18, 2020 set forth proposals on certain issues related to the plan of reorganization of Pacific Gas and Electric Company (the "Utility") and PG&E Corporation (together, "PG&E").

3. One proposal set forth in the ACR concerns the establishment of an Enhanced Oversight and Enforcement Process (the "Process"), consisting of six steps of escalating oversight and enforcement actions. The occurrence of defined triggering events would result in PG&E being placed in the applicable step, and, if PG&E did not adequately implement corrective actions, it would be moved to a higher step, accompanied by increasingly severe enforcement actions. At its higher steps, the Process would have significant effects on PG&E's operations, including the appointment of a restructuring officer and a receiver, and culminating in the review and potential revocation of PG&E's Certificate of Public Convenience and Necessity ("CPCN").

4. I understand that, with a couple of limited exceptions, the Process does not establish any minimum time periods between steps. Thus, PG&E could be moved from lower to higher levels of the Process relatively quickly, with dramatic effects on PG&E's business.

5. A lack of defined time periods between steps produces uncertainty as to the potential timing of enforcement actions within the Process. In the face of that uncertainty, financial markets will operate under the assumption that PG&E may undergo rapidly escalating enforcement actions within a short time period. This assumption will increase the perceived risk of investment in PG&E.

6. I have had numerous discussions with banks and investors relating to PG&E's anticipated exit financing. During those discussions, I have repeatedly heard concerns around issues of regulatory predictability and uncertainty as factors in the willingness of potential funding sources to provide equity or debt capital or the terms on which they would do so. I have heard from investors specific concern about the absence of defined time periods in the upper

level steps of the Process, with concern that PG&E could be moved through those stages rapidly.

7. PG&E will likely find it more difficult to access capital as a result of this uncertainty and increase in perceived risk, and the cost of raising such capital could increase. For example, if investors believe that escalating enforcement could lead to the revocation of PG&E's CPCN within a relatively short period, they are less likely to invest capital in a company that may be unable to operate with limited notice. Thus, raising debt and equity becomes more difficult with the prospect of accelerated enforcement. This effect is especially consequential during PG&E's efforts to raise capital needed to emerge from bankruptcy, particularly at a time of potential larger market uncertainty.

8. In addition, PG&E's credit ratings are in substantial part the function of ratings agencies' qualitative views of PG&E's regulatory environment, which is viewed as a critical aspect of a utility's "business risk." For example, S&P's global regulatory utility methodology states:

> "The regulatory framework/regime's influence is of critical importance when assessing regulated utilities' credit risk because it defines the environment in which a utility operates and has a significant bearing on a utility's financial performance. We base our assessment of the regulatory framework's relative credit supportiveness on our view of how regulatory stability, efficiency of tariff setting procedures, financial stability, and regulatory independence protect a utility's credit quality and its ability to recover its costs and earn a timely return."

9. Similarly, a full 50% of the weighting in the methodology that Moody's utilizes is founded on elements of the "legislative and judicial underpinnings of the regulatory framework," along with regulatory clarity on cost recovery and appropriate return on risk.

10. While it is customary for regulators to review the performance of utilities, with powers to impose negative consequences for failures, those processes customarily are, and should be, predictable, have clear timelines and review periods, and are escalated to the role of Commission-level engagement when something as severe as the later stages of the Process are implicated. As currently fashioned in the Proposal, however, such predictability and timelines are lacking, which will suggest to the market and rating agencies a potentially unstable regulatory framework, with the potential for rapid escalation through the Process steps, which will in turn discourage future investment.

11. Based on these well-recognized principles and my discussions with rating agencies, I believe that PG&E's business risk profile will likely be negatively impacted by the prospect of such accelerated enforcement actions. A resulting decrease in PG&E's credit rating would increase PG&E's cost of debt.

12. It is my understanding that a core purpose of the enhanced enforcement process is to lead to remedial actions to address shortcomings that trigger the Process. Thus, the Process should allow a reasonable amount of time for PG&E to address the concerns and should not inadvertently curtail PG&E's ability to obtain the resources it needs to be able to address and

ameliorate the issues that have triggered the enhanced process. If PG&E's access to affordable capital is constrained as a result of market fear that the Commission will not give PG&E time to address the issues, then failure could inadvertently become a self-fulfilling prophecy, undermining the positive goals of the Process.

13. The ACR also proposes the adoption of an earnings adjustment mechanism ("EAM"). The mechanism would adjust PG&E's revenue requirement based on PG&E's achievement of certain metrics, which would consist of a subset of the Safety and Operational Metrics that the ACR proposes. These metrics have yet to be defined and the relevant subset has yet to be specified (much less their weightings determined). Under the proposal for the EAM, the revenue requirement could be increased or decreased by up to 4% of earnings.

14. I understand that EAMs and other performance incentive mechanisms have previously been used within the utility industry. However, the mechanisms of which I am aware have generally been applied to more routine, industry-standard, and easily measured performance indicators (such as System Average Interruption Duration Index and System Average Interruption Frequency Index), in comparison to the safety-related considerations that will presumably make up the Safety and Operational Metrics. Because the context of wildfire safety in California is unlike the context in which other EAMs have been applied, the metrics used in other EAMs are unlikely to translate to the proposed EAM for PG&E, and implementing an EAM for PG&E would present novel challenges. Additionally, many wildfire-mitigation-related metrics are currently being calibrated and implemented, so there is limited information about the relative efficacy of metrics, which complicates the effort to effectively design an EAM that would incentivize desired outcomes.

15. An EAM would increase the uncertainty and expected volatility of earnings available to shareholders. Financial markets are generally more concerned by downside risk for Utilities than upside potential, and therefore will view volatility in earnings negatively. This volatility may be seen as especially acute where, as here, the metrics affecting earnings have not been previously employed in other performance incentive mechanisms. In addition, even if the EAM were designed to be symmetric with regard to potential increases and reductions to earnings, there may be a perception of bias toward unfavorable outcomes, depending on how metrics are defined and calibrated. Such a perception would exacerbate the negative view of earnings volatility.

16. This uncertainty about earnings would have an effect on PG&E's ability to raise capital. Specifically, the uncertainty would raise PG&E's cost of equity . This would undermine the company's efforts to improve its financial health and ensure access to the capital markets, including to fund wildfire prevention and other infrastructure investments.

17. The potential reduction in earnings created by the EAM could also negatively impact PG&E's credit rating. From a quantitative standpoint, a reduction in earnings could impair PG&E's cash flows needed to cover debt obligations with healthy margins, weakening PG&E's credit metrics (such as the ratio of Funds From Earnings to Debt or the ratio of Debt to EBITDA). Qualitatively, the possibility of earnings reductions, especially if based on metrics that are perceived to be subjective or vague, would negatively affect the assessment

of the Utility's business risk. A reduction in PG&E's credit rating could increase the cost of debt, which would harm customers.

18. PG&E's emergence from bankruptcy is an inopportune moment to implement an EAM that would cause volatility in earnings. PG&E is focused on supporting its fully capitalized Plan of Reorganization and facilitating a path back to an investment-grade issuer credit rating. Commencing active consideration of an EAM would increase uncertainty, and potentially harm rating agency and investor perceptions, which could materially weaken PG&E's financial position.

19. Because an EAM would result in changes to future earnings based on historical success or failure, it would reduce available resources when goals are not being met and additional resources for safety expenditures may be most needed. As a result, similar to the Enhanced Enforcement Oversight and Enforcement Process, the potential reduction in earnings due to safety failures threatens to become a self-fulfilling prophecy: The risk of a reduction in earnings could make it more difficult for PG&E to access capital in order to make needed investments and satisfy the metrics on which the EAM is based, so it becomes more likely that PG&E will fail to meet those metrics and be subject to a reduction, which in turn will further reduce access to capital, and so on.

20. Given the potential for adverse consequences and the novel wildfire safety context, the establishment of an EAM would require extremely careful determination of the appropriate metrics to be incorporated, the scale of measurement for each metric, the weight of each metric, and the appropriate time horizons for metric measurement and application of earnings adjustment. This determination would require the expenditure of significant time and resources by the CPUC, PG&E management and other stakeholders. During the extended time period required to consider and implement an EAM, uncertainty about the parameters of earnings volatility would persist, with the resulting negative consequences of such risk on PG&E's access to capital.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 13th day of March, 2020 at San Francisco, California.

Jason P. Wells

Jason P. Wells

APPENDIX D:

DECLARATION OF JOHN LOWE

DECLARATION OF JOHN LOWE

I, John Lowe, declare as follows:

1. I have personal knowledge of the facts stated in this declaration, and competently could testify to them if called as a witness.

2. I am Senior Director, Total Rewards for PG&E Corporation and Pacific Gas and Electric Company (the "Utility," and collectively with PG&E Corporation, "PG&E"). I lead the Compensation and Benefits functions, which are responsible for design and implementation of PG&E's compensation and benefits programs and practices, including PG&E's executive compensation programs. I joined PG&E in 2012 as Director of Executive Compensation before accepting my current position in June 2016. I have worked in the field of Human Resources for more than 35 years, 25 of which have been specifically focused in the area of compensation. Prior to joining PG&E, I was the Manager of Compensation for Michigan-based energy provider DTE Energy Company, Director of Compensation and Benefits at Holly Automotive Division, Coltec Industries, and spent years consulting on compensation and benefits strategies with The UL Group, Ltd. consulting firm. I hold a Bachelor of Science in Human Resources Management from Oakland University and a Master of Arts in Industrial Relations from Wayne State University.

3. I have reviewed certain of the proposals contained in the Assigned Commissioner's Ruling and Proposals issued on February 18, 2020 in the California Public Utilities Commission's ("Commission") investigation to consider the ratemaking and other implications of PG&E's Chapter 11 Plan of Reorganization (I.19-09-016). I submit this declaration to comment on two of the proposals contained in the Commissioner Proposal for Executive Compensation (Proposal #9), namely:

- The proposal for "[a] presumption that a material portion of executive compensation shall be withheld if … PG&E is the ignition source of a catastrophic wildfire, unless the Commission determines that it would be inappropriate based on the conduct of the utility" (the "Presumption Proposal"); and
- The proposal that "[e]xecutive officer compensation policies will include provisions that allow for restrictions, limitations, and cancellations of severance payments in the event of any felony criminal conviction related to public health and safety or financial misconduct by the reorganized PG&E, for executive officers serving at the time of the underlying conduct that led to the conviction," with "[i]mplementation of the policy … tak[ing] into account PG&E's need to attract and retain highly qualified executive officers" (the "Severance Proposal").

The Presumption Proposal

4. As I stated in my prior testimony in this matter, the Utility's Board of Directors and the PG&E Corporation Compensation Committee have discretion to reduce or eliminate incentive compensation payments for the Utility's executive officers if they believe it is appropriate to do so.[1] As I testified, I believe that such discretion is "important for ensuring that incentive payments are not made inappropriately under the totality of the circumstances."[2] As I also testified, the Board and the Compensation Committee have exercised this discretion on multiple occasions, including (i) after the devastating Camp Fire in 2018, when they eliminated all payments under PG&E's Short-Term Incentive Program ("STIP") for 2018; and (ii) after

[1] *See* PG&E-1 at 7-13, 7-19, 7-21 – 7-22 (my opening testimony submitted on January 31, 2020).

[2] *Id*. at 7-6.

PG&E Corporation's stock price significantly declined in the wake of the Tubbs Fire in 2017, when they eliminated all STIP payments for 2017 for PG&E Corporation's then-Chief Executive Officer and its Chief Financial Officer.[3]

5. I have serious concerns with the Presumption Proposal insofar as it proposes moving this sort of discretion from the Board and the Compensation Committee to the Commission. As I understand the proposal, it appears to envision that, following a catastrophic wildfire, a presumption that a material portion of incentive compensation shall be withheld could be overcome by relevant facts and circumstances, with the Commission being the one to determine whether the presumption has been overcome. I believe that having the Commission take on that role would be problematic from a recruiting/retention standpoint.

6. As I previously testified, executive incentive compensation does not constitute a "bonus," as persons unfamiliar with executive compensation sometimes characterize it; rather, incentive compensation at target levels is necessary to ensure that executives earn a market-competitive level of compensation.[4] Thus, incentive compensation is an important part of PG&E's ability to compete in the marketplace for talented executives.

7. If incentive compensation or a material portion thereof is perceived as subject to withholding in unpredictable ways, then an executive will likely substantially discount it when assessing the value of an overall compensation package—which could hurt a utility's ability to recruit and retain the talent required to meet its mission of providing safe, reliable, affordable and clean energy to its customers. This observation stems from an executive compensation

[3] *See* Mar. 3, 2020 Tr. at 1169 (my cross-examination testimony). I understand that the California Department of Forestry and Fire Protection determined that PG&E did not cause the Tubbs Fire. The stock price nevertheless substantially declined following the fire.

[4] *See* PG&E-1 at 7-3 (my opening testimony submitted on January 31, 2020).

concept called "line of sight," which stresses the importance of an executive being able to see a clear link between the executive's efforts on the job and the achievement of incentive compensation performance metrics, and a clear link between achievement of performance metrics and payment of incentive compensation. If "line of sight" is unclear or subject to breakage in ways that are perceived as outside the executive's control, then incentive compensation loses its incentive effect and can lose its value as a recruitment/retention tool, and thereby fail to promote the activities it is meant to promote.

8. I believe that discretion to determine whether to withhold incentive compensation (including to determine whether any presumption of withholding has been overcome) should continue to reside with the Board and the Compensation Committee as opposed to the Commission. I have three reasons for this.

9. First, it is fundamentally the role of a corporate Board to make compensation decisions for executive officers. It would be unusual for a government agency to control that decision for a private company.

10. Second, the Board and the Compensation Committee are likely to have greater access to relevant facts, and thus, are likely to be better positioned to make an informed and fair decision. The Board and the Committee may be privy to, for example, the current status of investigations into the cause of a wildfire ignition, and the facts and circumstances surrounding such cause (*e.g.*, facts bearing on whether there was negligence or not, and whether a third party contributed to the ignition). The Board and the Committee may not be able to share all such facts with the Commission while an investigation into a catastrophic event is ongoing, given the potential for California Public Records Act disclosure of such communications. Allowing the Board or the Committee to be the one to make the discretionary determination will give

executives and recruits greater confidence that the determination will be as informed and fair as possible.

11. Third, PG&E operates in a politically charged environment, especially when it comes to issues regarding wildfires. Executives and applicants for executive positions at PG&E will be well aware of this. Rightly or wrongly, they may be concerned about the effect of this reality on whether they will be able to earn a market-competitive level of compensation (which, as noted, requires incentive compensation) if the decision of whether to pay such compensation resides in the hands of a government agency. They may be further concerned to the extent a presumption of withholding would require the company to take affirmative action before the Commission in order for the executives to receive their incentive compensation and earned market-competitive level of compensation.

12. For these reasons, I believe that discretion to determine whether to withhold incentive compensation (including to determine whether any presumption of withholding has been overcome) should continue to reside with the Board and the Compensation Committee.

The Severance Proposal

13. The Severance Proposal is consistent with PG&E's existing practices in some respects, but also departs from those practices in a way I believe would be detrimental to PG&E's ability to recruit and retain qualified executives. Specifically:

14. PG&E has an Executive Incentive Compensation Recoupment Policy, a true and correct copy of which is attached hereto as Exhibit 1. It allows recoupment of incentive compensation from an executive officer in certain defined circumstances, including if such executive "engaged in fraud or other misconduct, and such fraud or misconduct caused material financial or reputational harm to [PG&E]." It permits recoupment in such circumstances up to

"the full amount of [incentive compensation] Payments during the fiscal year in which the fraud or misconduct occurred."

15. The policy thus permits misconduct-based recoupment only if the executive personally engaged in the misconduct. This accords with the important "line of sight" principle discussed above, in that it ties recoupment to events that are within the particular executive's control.[5]

16. PG&E also maintains an Officer Severance Policy governing the consequences of termination for cause, which includes termination based on serious misconduct, gross negligence, or fraud on the part of the officer. The severance policy provides that, in such circumstances, severance payments are not available to the terminated officer. This policy, too, focuses on the conduct of the affected individual, and thus is consistent with "line of sight" principles. A true and correct copy of the Officer Severance Policy is attached hereto as Exhibit 2.

17. The Severance Proposal in the ACR, by contrast, would contravene "line of sight" principles, in that it would permit restriction, limitation, or cancellation of payments for executives who did not personally engage in any misconduct. It therefore would permit restriction, limitation, or cancellation based on events that executives may perceive as out of their control, and even arbitrary.

[5] The policy also permits recoupment in the event of a material restatement of PG&E financial results, or in the event of a material miscalculation of incentive payments, without regard to whether an affected officer had a role in the original statement of financial results or in the miscalculation. In those situations, however, the amount subject to recoupment can be no greater than the amount of the payment associated with the difference between the original statement and the restatement, or associated with the miscalculation. Thus, recoupment in these circumstances merely reduces the officer's incentive compensation to what it was supposed to be in the first place.

18. I am not aware of any recoupment or severance policy of any major corporation that operates similarly. In my experience, corporate recoupment and severance policies permitting recoupment or cancellation based on misconduct invariably are similar to PG&E's policies, in that they permit recoupment or cancellation only if the affected executive personally engaged in the misconduct.[6] For example:

- Sempra Energy's recoupment policy, as publicly described, provides that incentive awards may be recovered "from any employee *whose* fraudulent or intentional misconduct materially affects the operations or financial results of the company or its subsidiaries."[7]
- Comcast's policy, as publicly described, permits recoupment "if it is determined by our Board that gross negligence, intentional misconduct or fraud by *one of our executive officers* or former executive officers caused or partially caused the restatement of all or a portion of our financial statements."[8]
- Verizon's policy, as publicly described, allows the company to recoup "incentive compensation from any senior executive *who has engaged in misconduct* that results in (i) significant reputational or financial harm to Verizon or (ii) a material financial restatement."[9]

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[6] *See generally* Shearman & Sterling LLP, *Corporate Governance & Executive Compensation Survey* at 90 (2018), *available at* http://digital.shearman.com/i/1019978-2018-corporate-governance-survey/87?.

[7] Sempra Energy, 2019 Notice of Annual Shareholders Meeting and Proxy Statement at 73 (May 9, 2019) (emphasis added), *available at* https://www.sempra.com/sites/default/files/content/files/node-page/file-list/2019/2019_proxy_sre.pdf.

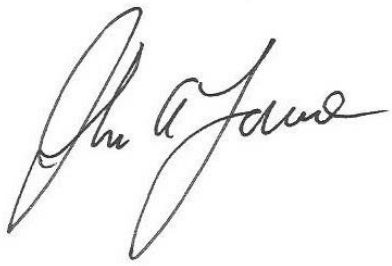
[8] Comcast Corporation, Notice of 2019 Annual Meeting of Shareholders at 50 (April 26, 2019) (emphasis added), *available at* https://www.sec.gov/Archives/edgar/data/1166691/000119312519121456/d696198ddef14a.htm.

[9] Verizon Communications Inc., 2019 Notice of Annual Meeting of Shareholders and Proxy Statement at 30 (March 18, 2019) (emphasis added), *available at* https://www.verizon.com/about/sites/default/files/2019-Proxy-Statement.pdf.

- Microsoft's published policy authorizes recovery of incentive payments that were made to an officer who "committed a significant legal or compliance violation in connection with the officer's employment, including a violation of Microsoft's corporate policies or Microsoft's Standards of Business Conduct."[10]

19. I believe that the Severance Proposal in the ACR, if adopted without modification, is likely to be perceived as an outlier. I believe that it also could be perceived as arbitrary and unfair, in that it could have serious negative financial consequences for individuals who did not engage in any misconduct. I believe that this would negatively impact PG&E's ability to attract and retain a talented executive team.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 13, 2020 at San Francisco, California.



John Lowe

[10] Microsoft Corporation Executive Compensation Recovery Policy (updated July 1, 2017), *available at* https://view.officeapps.live.com/op/view.aspx?src=https://c.s-microsoft.com/en-us/CMSFiles/Executive%20Compensation%20Recovery%20Policy.docx?version=0685b846-89dd-eef2-bc22-dca3407e96ca.

EXHIBIT 1

PG&E Corporation and Pacific Gas and Electric Company
Executive Incentive Compensation Recoupment Policy (Policy)
Effective February 19, 2019

PG&E Corporation and Pacific Gas and Electric Company (each, a Company) provide Section 16 Officers[1] the opportunity to participate in various performance-based short- and long-term compensation arrangements. Payments under such arrangements are advanced to such Section 16 Officers as earned, vested, or paid (Payments) but remain subject to recoupment as set forth in the Policy.

Under the Policy, the PG&E Corporation Compensation Committee (Compensation Committee), the Board of Directors (Board) of PG&E Corporation, or the Board of Pacific Gas and Electric Company, as applicable, based on the delegation described below, may, in good faith exercise of its reasonable discretion, seek recoupment of Payments previously advanced to Section 16 Officers upon any of the following Triggering Events described below. The Board of each Company has delegated the administration of the Policy to the Compensation Committee, including authority to determine whether or not to seek recoupment of Payments, except that, with respect to a particular Company's Chief Executive Officer,[2] the Policy will be administered by the Board of such Company. The Triggering Events are:

1. if either Company restates financial statements that were filed with the Securities and Exchange Commission for any of the past three completed fiscal years, and the individual was a Section 16 Officer of either Company during the fiscal year for which the financial statements were restated, or

2. if, during any of the past three completed fiscal years, a material miscalculation occurred with respect to the amount of any Payment made to an individual who was a Section 16 Officer at the time of such Payment, or

3. if any individual who served as a Section 16 Officer during the past three years engaged in fraud or other misconduct, and such fraud or misconduct caused material financial or reputational harm to either Company, as determined by the Compensation Committee or the Board of a Company.

Payments subject to recoupment will be no greater than:

- For Triggering Event 1 or 2: the difference between (i) the amount of any Payment made as a result of the erroneous financial statements or the material miscalculations, as

[1] "Section 16 Officer" means an "officer" of either Company who is subject to the reporting and short swing profit liability provisions of Section 16 of the Securities Exchange Act of 1934, as amended.

[2] A Company's Board of Directors shall administer the Policy with respect to the Company's President for periods in which the Chief Executive Officer position is not occupied.

applicable, and (ii) the lower Payment that would have been advanced based on the restated financial statement or in the absence of the material miscalculation, as applicable, or

- For Triggering Event 3: the full amount of Payments during the fiscal year in which the fraud or misconduct occurred.

The Compensation Committee, and the Boards of the Companies, if applicable, may exercise discretion regarding whether to adjust the amount of Payments that are subsequently recouped to account for tax consequences to the current or former Section 16 Officer.

The relevant administrator shall determine, in its sole discretion, the method of recoupment, to the extent permitted by law. The Policy does not limit the rights of the Companies to pursue other lawful remedies that they deem appropriate or their ability to seek lawful recoupment in appropriate circumstances (including circumstances beyond the scope of the Policy) of any amounts from any individual.

The Policy may be amended or terminated by the Boards of the Companies (with respect to the applicable Company) at any time.

EXHIBIT 2

PG&E CORPORATION
2012 OFFICER SEVERANCE POLICY
(Amended effective as of May 12, 2014)

1. Purpose. This is the controlling and definitive statement of the Officer Severance Policy of PG&E Corporation ("Policy"). Since Officers are employed at the will of PG&E Corporation ("Corporation") or a participating employer ("Employer"), their employment may be terminated at any time, with or without cause. A list of Employers is attached hereto as Appendix A. The Policy became effective March 1, 2012, and provides Officers of the Corporation and Employers in Officer Compensation Bands I through V ("Officers") with severance benefits if their employment is terminated, and the Officer is not eligible for severance benefits under the predecessor PG&E Corporation Officer Severance Policy (the "Predecessor Policy"), which was first adopted effective November 1, 1998.[1] The Policy's definition of Change in Control was amended effective May 12, 2014.[1] Severance benefits for officers not covered by this Policy (or the Predecessor Policy) will be provided under policies or programs developed by the appropriate lines of business in consultation with and with the approval by the Senior Human Resources Officer of the Corporation. For the avoidance of doubt, revisions made to this Policy relating to Code Section 409A (defined below), apply to all Officers including those that may be covered under prior provisions of the Policy as required by Section 6 hereof.

The purpose of the Policy is to attract and retain senior management by defining terms and conditions for severance benefits, to provide severance benefits that are part of a competitive total compensation package, to provide consistent treatment for all terminated officers, and to minimize potential litigation costs associated with Officer termination of employment.

2. Termination of Employment Not Following a Change in Control or Potential Change in Control.

(a) Corporation or Employer's Obligations. If the Corporation or an Employer exercises its right to terminate an Officer's employment without cause and such termination does

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[1] Severance benefits for Officers who are currently covered by an employment agreement will continue to be provided solely under such agreements until their expiration at which time this Policy will become effective for such Officers. Any Officer's waiver of benefits under this Policy shall take precedence over the terms of this Policy. If an employee becomes a covered Officer under this Policy as a result of a promotion, and if such Officer was then covered by a severance arrangement subject to Section 409A of the Internal Revenue Code of 1986 ("Code Section 409A"), the severance benefits under this Policy provided to such person shall comply with the time and form of payment provisions of such prior severance arrangement, to the extent required by Code Section 409A.

Officers subject to the Predecessor Policy as of February 29, 2012 will continue to be subject to the terms of that Prececessor Policy until three years after receiving notice of the adoption of this Policy and its terms, to the extent that becoming subject to this Policy would reduce such officers' aggregate level of benefits, as per Section 6 of the Predecessor Policy.

[2] Officers described in the second paragraph of the preceding footnote and officers subject to this Policy as of May 11, 2014 will continue to be subject to the definition of Change in Control in the Predecessor Policy or the Policy, as applicable, in effect on May 11, 2014, until three years after receiving notice of the adoption of the revised definition of Change in Control, to the extent that becoming subject to such revision would reduce such officers' aggregate level of benefits, as per Section 6 of the Predecessor Policy and this Policy.

not entitle Officer to payments under Section 3, the Officer shall be given thirty (30) days' advance written notice or pay in lieu thereof (which shall be paid in a lump sum together with the payment described in Section 2(a)(1) below). Except as provided in Section 2(b) below, in consideration of the Officer's agreement to the obligations described in Section 2(d) below and to the arbitration provisions described in Section 12 below, the following payments and benefits shall also be provided to Officer following Officer's separation from service (within the meaning of Code Section 409A):[2]

(1) A lump sum severance payment equal to: $^{1}/_{12}$ (the sum of the Officer's annual base compensation and the Officer's Short-Term Incentive Plan target award at the time of his or her termination) times twelve ("Severance Multiple"). Annual base compensation shall mean the Officer's monthly base pay for the month in which the Officer is given notice of termination, multiplied by 12. The payment described in this Section 2(a)(1) shall be made in a single lump sum as soon as practicable following the date the release of claims described in Section 2(d)(1) becomes effective, provided that payment shall in no event be made later than the 15th day of the third month following the later of the end of the calendar year or the Corporation's taxable year in which the Officer's separation from service occurs.

(2) Except as otherwise set forth in the applicable award agreement or as otherwise required by applicable law, the equity-based incentive awards granted to Officer under the Corporation's Long-Term Incentive Program which have not yet vested as of the date of termination will continue to vest over a period of months equal to the Severance Multiple after the date of termination as if the Officer had remained employed for such period. Except as otherwise set forth in the applicable award agreement, for vested stock options as of the date of termination, the Officer shall have the right to exercise such stock options at any time within their respective terms or within five years after termination, whichever is shorter. Except as otherwise set forth in the applicable award agreement, for stock options that vest during a period of months equal to the Severance Multiple, the Officer shall have the right to exercise such options at any time within one year after termination, subject to the term of the options. Except as otherwise set forth in the applicable award agreement, any unvested equity-based incentive awards remaining at the end of such period shall be forfeited;

(3) For Officers in Officer Bands I, II or III, two thirds of the unvested Company stock units in the Officer's account in the Corporation's Deferred Compensation Plan for Officers which were awarded in connection with the Executive Stock Ownership Program requirements ("SISOPs") shall vest upon the Officer's termination, and one third shall be forfeited. For Officers in Officer Bands IV and V, one third of any unvested SISOPs shall vest upon the Officer's termination, and two thirds shall be forfeited. Unvested stock units attributable to SISOPs which become vested under this provision shall be distributed to Officer in accordance with the Deferred Compensation Plan after such stock units vest;

(4) Officer shall be entitled to receive a lump sum cash payment equal to the estimated value of 18 months'of COBRA premiums for the Officer, based on the Officer's benefit levels at the time of termination (with such payment subject to taxation under applicable law);

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[2] Any payments made hereunder shall be less applicable taxes.

(5) To the extent not theretofore paid or provided, the Officer shall be paid or provided with any other amounts or benefits required to be paid or provided or which the Officer is eligible to receive under any plan, contract or agreement of the Corporation or Employer;

(6) Such career transition services as the Corporation's Senior Human Resources Officer shall determine is appropriate (if any), provided that payment of such services will only be made to the extent the Officer actually incurs an expense and then only to the extent incurred and paid within the time limit set forth in Treasury Regulation Section 1.409A-1(b)(9)(v)(E). Any such services, to the extent they are not exempt under Treasury Regulation Section 1.409A-1(b)(9)(v)(A) or (D), shall be structured to comply with the requirements of Treasury Regulation Section 1.409A-3(i)(1)(iv) and, if applicable, shall be subject to the six-month delay described in Code Section 409A(a)(2)(B)(i).

(7) All acts required of the Employer under the Policy may be performed by the Corporation for itself and the Employer, and the costs of the Policy may be equitably apportioned by the Administrator among the Corporation and the other Employers. The Corporation shall be responsible for making payments and providing benefits pursuant to this Policy for Officers employed by the Corporation. Whenever the Employer is permitted or required under the terms of the Policy to do or perform any act, matter or thing, it shall be done and performed by any Officer or employee of the Employer who is thereunto duly authorized by the board of directors of the Employer. Each Employer shall be responsible for making payments and providing benefits pursuant to the Policy on behalf of its Officers or for reimbursing the Corporation for the cost of such payments or benefits, as determined by the Corporation in its sole discretion. In the event the respective Employer fails to make such payment or reimbursement, an Officer's (or other payee's) sole recourse shall be against the respective Employer, and not against the Corporation;

(b) Remedies. An Officer shall be entitled to recover damages for late or nonpayment of amounts to which the Officer is entitled hereunder. The Officer shall also be entitled to seek specific performance of the obligations and any other applicable equitable or injunctive relief.

(c) Section 2(a) shall not apply in the event that an Officer's employment is terminated "for cause." Except as used in Section 3 of this Policy, "for cause" means that the Corporation, in the case of an Officer employed by the Corporation, or Employer in the case of an Officer employed by an Employer, acting in good faith based upon information then known to it, determines that the Officer has engaged in, committed, or is responsible for (1) serious misconduct, gross negligence, theft, or fraud against the Corporation and/or an Employer; (2) refusal or unwillingness to perform his duties; (3) inappropriate conduct in violation of Corporation's equal employment opportunity policy; (4) conduct which reflects adversely upon, or making any remarks disparaging of, the Corporation, its Board of Directors, Officers, or employees, or its affiliates or subsidiaries; (5) insubordination; (6) any willful act that is likely to have the effect of injuring the reputation, business, or business relationship of the Corporation or its subsidiaries or affiliates; (7) violation of any fiduciary duty; or (8) breach of any duty of loyalty; or (9) any breach of the restrictive covenants contained in Section 2(d) below. Upon termination "for cause," the Corporation, its Board of Directors, Officers, or employees, or its affiliates or subsidiaries shall have no liability to the Officer other than for accrued salary,

vacation benefits, and any vested rights the Officer may have under the benefit and compensation plans in which the Officer participates and under the general terms and conditions of the applicable plan.

(d) Obligations of Officer.

(1) Release of Claims. There shall be no obligation to commence the payment of the amounts and benefits described in Section 2(a) until the latter of (1) the delivery by Officer to the Corporation a fully executed comprehensive general release of any and all known or unknown claims that he or she may have against the Corporation, its Board of Directors, Officers, or employees, or its affiliates or subsidiaries and a covenant not to sue in the form prescribed by the Administrator, and (2) the expiration of any revocation period set forth in the release. The Corporation shall promptly furnish such release to Officer in connection with the Officer's separation from service, and such release must be executed by Officer and become effective during the period set forth in the release as a condition to Officer receiving the payments and benefits described in Section 2(a).

(2) Covenant Not to Compete. (i) During the period of Officer's employment with the Corporation or its subsidiaries and for a period of twelve (12) months thereafter (the "Restricted Period"), Officer shall not, in any county within the State of California or in any city, county or area outside the State of California within the United States or in the countries of Canada or Mexico, directly or indirectly, whether as partner, employee, consultant, creditor, shareholder, or other similar capacity, promote, participate, or engage in any activity or other business competitive with the Corporation's business or that of any of its subsidiaries or affiliates, without the prior written consent of the Corporation's Chief Executive Officer. Notwithstanding the foregoing, Officer may have an interest in any public company engaged in a competitive business so long as Officer does not own more than 2 percent of any class of securities of such company, Officer is not employed by and does not consult with, or becomes a director of, or otherwise engage in any activities for, such competing company.

a. The Corporation and its subsidiaries presently conduct their businesses within each county in the State of California and in areas outside California that are located within the United States, and it is anticipated that the Corporation and its subsidiaries will also be conducting business within the countries of Canada and Mexico. Such covenants are necessary and reasonable in order to protect the Corporation and its subsidiaries in the conduct of their businesses. To the extent that the foregoing covenant or any provision of this Section 2(d)(2)a shall be deemed illegal or unenforceable by a court or other tribunal of competent jurisdiction with respect to (i) any geographic area, (ii) any part of the time period covered by such covenant, (iii) any activity or capacity covered by such covenant, or (iv) any other term or provision of such covenant, such determination shall not affect such covenant with respect to any other geographic area, time period, activity or other term or provision covered by or included in such covenant.

(3) Soliciting Customers and Employees. During the Restricted Period, Officer shall not, directly or indirectly, solicit or contact any customer or any prospective customer of the Corporation or its subsidiaries or affiliates for any commercial pursuit that could be reasonably construed to be in competition with the Corporation, or induce, or attempt to

induce, any employees, agents or consultants of or to the Corporation or any of its subsidiaries or affiliates to do anything from which Officer is restricted by reason of this covenant nor shall Officer, directly or indirectly, offer or aid to others to offer employment to, or interfere or attempt to interfere with any employment, consulting or agency relationship with, any employees, agents or consultants of the Corporation, its subsidiaries and affiliates, who received compensation of $75,000 or more during the preceding six (6) months, to work for any business competitive with any business of the Corporation, its subsidiaries or affiliates.

(4) Confidentiality. Officer shall not at any time (including after termination of employment) divulge to others, use to the detriment of the Corporation or its subsidiaries or affiliates, or use in any business competitive with any business of the Corporation or its subsidiaries or affiliates any trade secret, confidential or privileged information obtained during his employment with the Corporation or its subsidiaries or affiliates, without first obtaining the written consent of the Corporation's Chief Executive Officer. This paragraph covers but is not limited to discoveries, inventions (except as otherwise provided by California law), improvements, and writings, belonging to or relating to the affairs of the Corporation or of any of its subsidiaries or affiliates, or any marketing systems, customer lists or other marketing data. Officer shall, upon termination of employment for any reason, deliver to the Corporation all data, records and communications, and all drawings, models, prototypes or similar visual or conceptual presentations of any type, and all copies or duplicates thereof, relating to all matters contemplated by this paragraph.

(5) Assistance in Legal Proceedings. During the Restricted Period, Officer shall, upon reasonable notice from the Corporation, furnish information and proper assistance (including testimony and document production) to the Corporation as may be reasonably required by the Corporation in connection with any legal, administrative or regulatory proceeding in which it or any of its subsidiaries or affiliates is, or may become, a party, or in connection with any filing or similar obligation of the Corporation imposed by any taxing, administrative or regulatory authority having jurisdiction, provided, however, that the Corporation shall pay all reasonable expenses incurred by Officer in complying with this paragraph within 60 days after Officer incurs such expenses.

(6) Remedies. Upon Officer's failure to comply with the provisions of this Section 2(d), the Corporation shall have the right to immediately terminate any unpaid amounts or benefits described in Section 2(a) to Officer. In the event of such termination, the Corporation shall have no further obligations under this Policy and shall be entitled to recover damages. In the event of an Officer's breach or threatened breach of any of the covenants set forth in this Section 2(d), the Corporation shall also be entitled to specific performance by Officer of any such covenant and any other applicable equitable or injunctive relief.

3. Termination of Employment Following a Change in Control or Potential Change in Control.

(a) If an Executive Officer's employment by the Corporation or any subsidiary or successor of the Corporation shall be subject to an Involuntary Termination within the Covered Period, then the provisions of this Section 3 instead of Section 2 shall govern the obligations of the Corporation as to the payments and benefits it shall provide to the Executive Officer. In the

event that Executive Officer's employment with the Corporation or an employing subsidiary is terminated under circumstances which would not entitle Executive Officer to payments under this Section 3, Executive Officer shall only receive such benefits to which he is entitled under Section 2, if any. In no event shall Executive Officer be entitled to receive termination benefits under both this Section 3 and Section 2.

All the terms used in this Section 3 shall have the following meanings:

(1) "Affiliate" shall mean any entity which owns or controls, is owned or is under common ownership or control with, the Corporation.

(2) "Cause" shall mean (i) the willful and continued failure of the Executive Officer to perform substantially the Executive Officer's duties with the Corporation or one of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to the Executive Officer by the Board of Directors or the Chief Executive Officer of the Corporation which specifically identifies the manner in which the Board of Directors or Chief Executive Officer believes that the Executive Officer has not substantially performed the Executive Officer's duties; or (ii) the willful engaging by the Executive Officer in illegal conduct or gross misconduct which is materially demonstrably injurious to the Corporation.

For purposes of the provision, no act or failure to act, on the part of the Executive Officer, shall be considered "willful" unless it is done, or omitted to be done, by the Executive Officer in bad faith or without reasonable belief that the Executive Officer's action or omission was in the best interests of the Corporation. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board of Directors or upon the instructions of the Chief Executive Officer or a senior officer of the Corporation or based upon the advice of counsel for the Corporation shall be conclusively presumed to be done, or omitted to be done, by the Executive Officer in good faith and in the best interests of the Corporation. The cessation of employment of the Executive Officer shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive Officer a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board of Directors at a meeting of the Board of Directors called and held for such purpose (after reasonable notice is provided to the Executive Officer and the Executive Officer is given an opportunity, together with counsel, to be heard before the Board of Directors), finding that, in the good faith opinion of the Board of Directors, the Executive Officer is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(3) "Change in Control" shall mean the occurrence of any of the following:

a. any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 ("Exchange Act"), but excluding any benefit plan for employees or any trustee, agent or other fiduciary for any such plan acting in such person's capacity as such fiduciary), directly or indirectly, becomes the "beneficial owner" (as defined in Rule 13d-3 promulgated under the Exchange Act) of securities of the Corporation representing thirty percent (30%) or more of the combined voting power of the Corporation's then outstanding voting securities; or

b. during any two consecutive years, individuals who at the beginning of such a period constitute the Board of Directors of the Corporation ("Board") cease for any reason to constitute at least a majority of the Board, unless the election, or the nomination for election by the shareholders of the Corporation, of each new member of the Board ("Director") was approved by a vote of at least two-thirds ($^2/_3$) of the Directors then still in office (1) who were Directors at the beginning of the period or (2) whose election or nomination was previously so approved; or

c. the consummation of any consolidation or merger of the Corporation other than a merger or consolidation which would result in the holders of the voting securities of the Corporation outstanding immediately prior thereto continuing to directly or indirectly hold at least seventy percent (70%) of the Combined Voting Power of the Corporation, the surviving entity in the merger or consolidation or the parent of such surviving entity outstanding immediately after the merger or consolidation; or

d. (1) the consummation of any sale, lease, exchange or other transfer (in one or a series of related transactions) of all or substantially all of the assets of the Corporation or (2) the approval of the shareholders of the Corporation of a plan of liquidation or dissolution of the Corporation.

(4) "Change in Control Date" shall mean the date on which a Change in Control occurs.

(5) "Combined Voting Power" shall mean the combined voting power of the Corporation's or other relevant entity's then outstanding voting securities.

(6) "Covered Period" shall mean the period commencing with the Change in Control Date and terminating two (2) years following said commencement; provided, however, that if a Change in Control occurs and Executive Officer's employment with the Corporation or the employing subsidiary is subject to an Involuntary Termination before the Change in Control Date but on or after a Potential Change in Control Date, and if it is reasonably demonstrated by the Executive Officer that such termination (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control, or (ii) otherwise arose in connection with or in anticipation of a Change in Control, then the Covered Period shall mean, as applied to Executive Officer, the two-year period beginning on the date immediately before the Potential Change in Control Date.

(7) "Disability" shall mean the absence of the Executive Officer from the Executive Officer's duties with the Corporation or the employing subsidiary on a full-time basis for 180 consecutive business days as a result of incapacity due to physical or mental illness which is determined to be total and permanent by a physician selected by the Corporation or its insurers and acceptable to the Executive Officer or the Executive Officer's legal representative.

(8) "Executive Officer" shall mean officers in Officer Compensation Bands I through II.

(9) "Good Reason" shall mean any one or more of the following which takes place within the Covered Period:

a. A material diminution in the Executive Officer's base compensation;

b. A material diminution in the Executive Officer's authority, duties, or responsibilities;

c. A material diminution in the authority, duties, or responsibilities of the supervisor to whom the Executive Officer is required to report, including a requirement that the Executive Officer report to a corporate officer or employee instead of reporting directly to the Board of Directors of the Corporation (in the case of an Executive Officer reporting to such Board of Directors);

d. A material diminution in the budget over which the Executive Officer retains authority;

e. A material change in the geographic location at which the Executive Officer must perform the services; or

f. Any other action or inaction that constitutes a material breach by the Corporation of this Policy;

provided, however, that the Executive Officer must provide notice to the Corporation of the existence of the applicable condition described in this Section 3(a)(9) within 90 days of the initial existence of the condition, upon the notice of which the Corporation shall have 30 days during which it may remedy the condition and, if remedied, Good Reason shall not exist.

(10) "Involuntary Termination" shall mean a termination (i) by the Corporation without Cause, or (ii) by Executive Officer following Good Reason; provided, however, the term "Involuntary Termination" shall not include termination of Executive Officer's employment due to Executive Officer's death, Disability, or voluntary retirement.

(11) "Potential Change in Control" shall mean the earliest to occur of (i) the date on which the Corporation executes an agreement or letter of intent, where the consummation of the transaction described therein would result in the occurrence of a Change in Control, (ii) the date on which the Board of Directors approves a transaction or series of transactions, the consummation of which would result in a Change in Control, or (iii) the date on which a tender offer for the Corporation's voting stock is publicly announced, the completion of which would result in a Change in Control; provided, however, that if such Potential Change in Control terminates by its terms, such transaction shall no longer constitute a Potential Change in Control.

(12) "Potential Change in Control Date" shall mean the date on which a Potential Change in Control occurs.

(13) "Reference Salary" shall mean the greater of (i) the annual rate of Executive Officer's base salary from the Corporation or the employing subsidiary in effect immediately before the date of Executive Officer's Involuntary Termination, or (ii) the annual

rate of Executive Officer's base salary from the Corporation or the employing subsidiary in effect immediately before the Change in Control Date.

(14) "Termination Date" shall be the date specified in the written notice of termination of Executive Officer's employment given by either party in accordance with Section 3(b) of this Policy.

(b) Notice of Termination. During the Covered Period, in the event that the Corporation (including an employing subsidiary) or Executive Officer terminates Executive Officer's employment with the Corporation or Employer, the party terminating employment shall give written notice of termination to the other party, specifying the Termination Date and the specific termination provision in this Section 3 that is relied upon, if any, and setting forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive Officer's employment under the provision so indicated. The Termination Date shall be determined as follows: (i) if Executive Officer's employment is terminated for Disability, thirty (30) days after a Notice of Termination is given (provided that Executive Officer shall not have returned to the full-time performance of Executive Officer's duties during such 30-day period); (ii) if Executive Officer's employment is terminated by the Corporation in an Involuntary Termination, thirty days after the date the Notice of Termination is received by Executive Officer (provided that the Corporation may provide Officer with pay in lieu of notice, which shall be paid in a lump sum together with the payment described in Section 3(c)(1) below); and (iii) if Executive Officer's employment is terminated by the Corporation for Cause (as defined in this Section 3), the date specified in the Notice of Termination, provided, that the events or circumstances cited by the Board of Directors as constituting Cause are not cured by Executive Officer during any cure period that may be offered by the Board of Directors. The Date of Termination for a resignation of employment other than for Good Reason shall be the date set forth in the applicable notice, which shall be no earlier than ten (10) days after the date such notice is received by the Corporation, unless waived by the Corporation.

During the Covered Period, a notice of termination given by Executive Officer for Good Reason shall be given within 90 days after occurrence of the event on which Executive Officer bases his notice of termination and shall provide a Termination Date of thirty (30) days after the notice of termination is given to the Corporation (provided that the Corporation may provide Officer with pay in lieu of notice, which shall be paid in a lump sum together with the payment described in Section 3(c)(1) below).

(c) Corporation's Obligations. If Executive Officer separates from service due to an Involuntary Termination within the Covered Period, then the Corporation shall provide Executive Officer the following benefits:

(1) The Corporation shall pay to the Executive Officer a lump sum in cash within thirty (30) days after the Executive Officer's separation from service:

a. the sum of (1) any earned but unpaid base salary through the Termination Date at the rate in effect at the time of the notice of termination to the extent not theretofore paid; (2) the Executive Officer's pro-rated target bonus under the Short-Term Incentive Plan of the Corporation, an Affiliate, or a predecessor, for the fiscal year in which the

Termination Date occurs (the "Target Bonus"); and (3) any accrued but unpaid vacation pay, in each case to the extent not theretofore paid;

b. the amount equal to the product of (1) two and (2) the sum of (x) the Reference Salary and (y) the Target Bonus; and

c. a lump sum cash payment equal to the estimated value of 18 months'of COBRA premiums for the Officer, based on the Officer's beneit levels at the time of termination (with such payment subject to taxation under applicable law), if any;

(2) Executive Officer shall be eligible to receive such career transition services as the Corporation's Senior Human Resources Officer shall determine is appropriate (if any), provided that payment of such services will only be made to the extent the Officer actually incurs an expense and then only to the extent incurred and paid within the time limit set forth in Treasury Regulation Section 1.409A-1(b)(9)(v)(E). Any such services, to the extent they are not exempt under Treasury Regulation Section 1.409A-1(b)(9)(v)(A) or (D), shall be structured to comply with the requirements of Treasuary Regulation Section 1.409A-3(i)(1)(iv) and, if applicable, shall be subject to the six-month delay described in Code Section 409A(a)(2)(B)(i).

(3) Remedies. The Executive Officer shall be entitled to recover damages for late or nonpayment of amounts which the Corporation is obligated to pay hereunder. The Executive Officer shall also be entitled to seek specific performance of the Corporation's obligations and any other applicable equitable or injunctive relief.

(d) Adjustment for Excise Taxes.

(1) "Best-Net Provision"

Subject to Section 3(d)(2) below, in the event that the payments and other benefits provided for in this Policy or otherwise payable to Executive Officer (i) constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code") and (ii) would be subject to the excise tax imposed by Section 4999 of the Code, then Executive Officer's payments and benefits under this Policy or otherwise payable to Executive Officer outside of this Policy shall be either delivered in full (without the Corporation paying any portion of such excise tax), or delivered as to 2.99 times of Executive's base amount (within the meaning of Section 280G of the Code) so as to result in no portion of such payments and benefits being subject to such excise tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and such excise tax, results in the receipt by Executive Officer on an after-tax basis of the greatest amount of payments and benefits, notwithstanding that all or some portion of such payments and benefits may subject to such excise tax. Unless the Corporation and Executive Officer otherwise agree in writing, any determination required under this Section 3(d)(1) shall be made in writing by Deloitte & Touche (the "Accounting Firm"), whose determination shall be conclusive and binding upon Executive Officer and the Corporation for all purposes. For purposes of making the calculations required by this Section 3(d)(1), the Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Section 280G and 4999 of the Code. The Corporation and Executive Officer

shall furnish to the Accounting Firm such information and documents as the Accounting Firm may reasonably request in order to make a determination under this Section 3(d)(1).

Any reduction in payments and/or benefits shall occur in the following order as reasonably determined by the Accounting Firm: (1) reduction of cash payments, (2) reduction of non-cash/non-equity-based payments or benefits, and (3) reduction of vesting acceleration of equity-based awards; provided, however, that any non-taxable payments or benefits shall be reduced last in accordance with the same categorical ordering rule. In the event items described in (1) or (2) are to be reduced, reduction shall occur in reverse chronological order such that the payment or benefit owed on the latest date following the occurrence of the event triggering the excise tax will be the first payment to be reduced (with reductions made pro-rata in the event payments are owed at the same time). In the event that acceleration of vesting of equity-based awards is to be reduced, such acceleration of vesting shall be cancelled in a manner such as to obtain the best economic benefit for the officer (with reductions made pro-rata if economically equivalent), as determined by the Accounting Firm.

4. Administration. The Policy shall be administered by the Senior Human Resources Officer of the Corporation ("Administrator"), who shall have the authority to interpret the Policy and make and revise such rules as may be reasonably necessary to administer the Policy. The Administrator shall have the duty and responsibility of maintaining records, making the requisite calculations, securing Officer releases, and disbursing payments hereunder. The Administrator's interpretations, determinations, rules, and calculations shall be final and binding on all persons and parties concerned.

5. No Mitigation. Payment of the amounts and benefits under Section2(a) and Section 3 (except as otherwise provided in Section 2(a)(5)) shall not be subject to offset, counterclaim, recoupment, defense or other claim, right or action which the Corporation or an Employer may have and shall not be subject to a requirement that Officer mitigate or attempt to mitigate damages resulting from Officer's termination of employment.

6. Amendment and Termination. The Corporation, acting through its Compensation Committee, reserves the right to amend or terminate the Policy at any time; provided, however, that any amendment which would reduce the aggregate level of benefits, or terminate the Policy, shall not become effective prior to the third anniversary of the Corporation giving notice to Officers of such amendment or termination.

7. Successors. The Corporation will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation expressly to assume and to agree to perform its obligations under this Policy in the same manner and to the same extent that the Corporation would be required to perform such obligations if no such succession had taken place; provided, however, that no such assumption shall relieve the Corporation of its obligations hereunder. As used herein, the "Corporation" shall mean the Corporation as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform its obligations by operation or law or otherwise.

This Policy shall inure to the benefit of and be binding upon the Officer (and Officer's personal representatives and heirs), Corporation and its successors and assigns, and any such successor or assignee shall be deemed substituted for the Corporation under the terms of this Policy for all purposes. As used herein, "successor" and "assignee" shall include any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires the stock of the Corporation or to which the Corporation assigns this Policy by operation of law or otherwise. If Officer should die while any amount would still be payable to Officer hereunder if Officer had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with this Policy to Officer's devisee, legatee or other designee, or if there is no such designee, to Officer's estate.

8. Nonassignability of Benefits. The payments under this Policy or the right to receive future payments under this Policy may not be anticipated, alienated, pledged, encumbered, or subject to any charge or legal process, and if any attempt is made to do so, or a person eligible for payments becomes bankrupt, the payments under the Policy of the person affected may be terminated by the Administrator who, in his or her sole discretion, may cause the same to be held if applied for the benefit of one or more of the dependents of such person or make any other disposition of such benefits that he or she deems appropriate.

9. Nonguarantee of Employment. Officers covered by the Policy are at-will employees, and nothing contained in this Policy shall be construed as a contract of employment between the Officer and the Corporation (or, where applicable, a subsidiary or affiliate of the Corporation), or as a right of the Officer to continued employment, or to remain as an Officer, or as a limitation on the right of the Corporation (or a subsidiary or affiliate of the Corporation) to discharge Officer at any time, with or without cause.

10. Benefits Unfunded and Unsecured. The payments under this Policy are unfunded, and the interest under this Policy of any Officer and such Officer's right to receive payments under this Policy shall be an unsecured claim against the general assets of the Corporation.

11. Applicable Law. All questions pertaining to the construction, validity, and effect of the Policy shall be determined in accordance with the laws of the United States and, to the extent not preempted by such laws, by the laws of the state of California.

12. Arbitration. With the exception of any request for specific performance, injunctive or other equitable relief, any dispute or controversy of any kind arising out of or related to this Policy, Officer's employment with the Corporation (or with the employing subsidiary), the termination thereof or any claims for benefits shall be resolved exclusively by final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. Provided, however, that in making their determination, the arbitrators shall be limited to accepting the position of the Officer or the position of the Corporation, as the case may be. The only claims not covered by this Section 12 are claims for benefits under workers' compensation or unemployment insurance laws; such claims will be resolved under those laws. The place of arbitration shall be San Francisco, California. Parties may be represented by legal counsel at the arbitration but must bear their own fees for such representation. The prevailing party in any dispute or controversy covered by this Section 12, or with respect to any request for specific performance, injunctive or other equitable relief, shall be

entitled to recover, in addition to any other available remedies specified in this Policy, all litigation expenses and costs, including any arbitrator or administrative or filing fees and reasonable attorneys' fees. Such expenses, costs and fees, if payable to Officer, shall be paid within 60 days after they are incurred. Both the Officer and the Corporation specifically waive any right to a jury trial on any dispute or controversy covered by this Section 12. Judgment may be entered on the arbitrators' award in any court of competent jurisdiction.

13. Reimbursements and In-Kind Benefits. Notwithstanding any other provision of this Policy, all reimbursements and in-kind benefits provided under this Policy shall be made or provided in accordance with the requirements of Code Section 409A, including, where applicable, the requirement that (i) the amount of expenses eligible for reimbursement and the provision of benefits in kind during a calendar year shall not affect the expenses eligible for reimbursement or the provision of in-kind benefits in any other calendar year; (ii) the reimbursement for an eligible expense will be made on or before the last day of the calendar year following the calendar year in which the expense is incurred (or by such earlier time set forth in this Policy); (iii) the right to reimbursement or right to in-kind benefit is not subject to liquidation or exchange for another benefit; and (iv) each reimbursement payment or provision of in-kind benefit shall be one of a series of separate payments (and each shall be construed as a separate identified payment) for purposes of Code Section 409A.

14. Separate Payments. Each payment and benefit under this Policy shall be a "separate payment" for purposes of Code Section 409A.

APPENDIX A

PARTICIPATING EMPLOYERS

PG&E Corporation
Pacific Gas and Electric Company
PG&E Corporation Support Services, Inc.